

**TAB 08:**

**Appointment of  
Counsel**

Appointment of Counsel  
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Executive Director  
Office of Indigent Defense Services  
May 12, 2017

(A) Appointment of Trial Counsel

a. IDS Rules

- i. IDS Rules govern the appointment of trial counsel in all potentially capital cases. All cases in which the defendant is at least 18 years old and in which the defendant is charged with first-degree murder or an undesignated murder are potentially capital cases. Cases in which the defendant is less than 18 years old, and therefore is not eligible for the death penalty, are not potentially capital cases and IDS does not directly appoint counsel in those cases. IDS Rule 2A.1(a). The appointment by OCD covers any contemporaneous non-capital charges joined with the capital charge.
- ii. When a defendant in a potentially capital case appears for their first appearance in district court, the court determines whether the defendant is indigent and wishes to have counsel appointed. The clerk will then fax the completed “Notice and Determination of Counsel in First Degree Murder (Or Undesignated Degree Of Murder) Cases At the Trial Level” [AOC-CR-427] form to the Office of the Capital Defender.
- iii. The Office of the Capital Defender will then begin the process of appointing trial counsel. IDS policy requires that OCD first contact the local public defender in districts in which there is a public defender office to determine if they can accept the case. If the public defender cannot accept the case, and there is no available Assistant Capital Defender in a local OCD office, then OCD begins contacting private counsel who are on the appropriate roster and who have offices in the county in which the case is pending. If no local counsel is available, OCD will then contact private counsel in the adjoining counties.
- iv. IDS limits counsel to no more than 8 pending potentially capital cases, in order to ensure that counsel has the time to do the work necessary to provide the effective assistance of counsel. With the approval of the IDS Director and attorney can be appointed to cases beyond this limit. Approval is based on an analysis of the attorney’s pending cases, including whether the cases have been declared capital, any expected trial dates, and other information relevant to determining the attorney’s ability to provide representation to clients in more than 8 cases.

b. Appointment of Provisional Counsel

- i. IDS Rule 2A.2(a) authorizes the appointment of lawyer on a “provisional basis” prior to the defendant’s first appearance. The Rules states: “Upon learning that a defendant has been charged with a capital offense, the [Capital Defender] may immediately appoint a lawyer on a provisional

basis to conduct a preliminary investigation and determine whether a defendant is indigent and needs appointed counsel.” Provisional counsel is authorized to take steps necessary to protect the defendant’s rights pending appointment of trial counsel by the Capital Defender. The Rule authorizing appointment of provisional counsel reflects the importance of affording counsel to defendants charged with a potentially capital offense.

c. Rule 24 and Appointment of Second Counsel

- i. Rule 24 of the General Rules of Practice requires a pre-trial conference in every case in which the defendant is charged with a crime punishable by death. If the State is authorized to seek death following a Rule 24 hearing, then the defendant is entitled to the appointment of second counsel. N.C.G.S. § 7A-450(b1). The Capital Defender will consult with the lawyer who is representing the defendant about the selection of second counsel, and will generally follow the same policy in appointing counsel from the county in which the case is pending.
- ii. IDS Rule 2A.2(d) authorizes the appointment of second counsel prior to the Rule 24 hearing only if the “IDS Director finds good cause justifying an earlier appointment.” In determining whether there is good cause, IDS looks not only at the likelihood that the case will be declared capital, but also at whether there is work that needs to be done prior to the Rule 24 hearing that cannot be accomplished by one lawyer, assisted with an investigator and mitigation specialist if need be. Under this standard it is rare for IDS to approve the appointment of second counsel prior to a Rule 24 hearing.
- iii. In some non-capital cases counsel may seek an order from the court finding that second counsel should be appointed in order to ensure that the defendant receives the effective assistance of counsel. In some capital cases similar orders are entered to appoint a third lawyer. IDS honors these orders and will appoint additional counsel.

d. Standby Counsel

- i. If a defendant in a potentially capital case elects to proceed *pro se* pursuant to *Faretta v. California*, 422 U.S. 806 (1975), the Capital Defender is authorized to appoint standby counsel. IDS Rule 2A.3(b) states; “If a capital defendant has elected to proceed without the assistance of counsel, the trial judge shall immediately notify the [Capital Defender] who may appoint, in his or her discretion, standby counsel to assist the defendant...” See also N.C.G.S. § 15A-1243 (appointment of standby counsel shall be in accordance with IDS Rules). As a practical matter, when counsel has already been appointed and the defendant then elects to proceed *pro se*, the court can appoint existing counsel to remain on the case as standby counsel.

e. Withdrawal of Counsel

- i. When a case that has been proceeding capitally is declared non-capital, one of the lawyers should move to withdraw. IDS Rule 2A.5( c ). If the case is declared non-capital within thirty days of the trial, IDS will generally approve allowing both lawyers to remain in the case as it would

be overly difficult for one of the lawyers to prepare to handle the entire trial in that period of time. In cases in which the declaration is made more than thirty days from trial, IDS will consider the complexity of the case in determining whether to allow both counsel to remain in the case. In some cases trial courts have entered orders allowing both counsel to remain in the case.

- ii. IDS Rule 2A.5(b) provides that “[f]or good cause the [Capital Defender] may request *ex parte* that a judge of a court of competent jurisdiction replace lead or associate counsel previously appointed with new counsel selected by the [Capital Defender].” If the court determines that counsel is providing ineffective assistance, then substitution is required. Even when counsel’s performance does not qualify as ineffective assistance, the court has the discretion based upon its evaluation of the case to order substitution of counsel.



**N.C. Office of Indigent Defense Services**

# **FY15 Capital Trial Case Study**

## **Potentially Capital Case Costs at the Trial Level**

**November 2015**

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## FY15 Capital Trial Case Study Potentially Capital Case Costs at the Trial Level

### Executive Summary

*This study refers to all first degree and undesignated degree of murder cases at the trial level as “potentially capital” cases because the defendant faces either the death penalty or life imprisonment without parole. Cases where the District Attorney (DA) pursued the death penalty at some point are referred to as “proceeded capital” cases. Cases where the DA pursued life without parole are referred to as “proceeded non-capital” cases. G.S. 7A-450(b1) provides that indigent defendants may not be capitally tried without the timely appointment of a second defense attorney. Case costs include all expenditures on a case, including all PAC and expert fees and expenses. Expenditures on cases handled by public defenders and capital defenders are not included because those attorneys are paid by salary and hours data is not available for the entire study period. The study also looked at dispositions of cases that were disposed between FY07 and FY15 year-to-date as of April 29, 2015. IDS conducted a previous capital trial study in FY08 that looked at potentially capital trial cases disposed between FY02 and FY06.*

#### 1. The High Profile Expensive Potentially Capital Cases at the Trial Level Remain the Exception (p. 13-14, 21-26)

While the media and others tend to focus on the few rare cases that have a high price tag or high expert fees, most potentially capital cases are resolved at a relatively low cost.

- 50% cost less than \$18,500
- 75% cost less than \$37,500
- 90% cost less than \$74,046
- 1 in 5 cases (21.3%) have no private investigator, mitigation specialist, expert, or attorney support services fees (e.g. paralegals)
- 53.7% have private investigator, mitigation specialist, expert, and attorney support services fees that total less than \$5,000
- 72% have private investigator, mitigation specialist, expert, and attorney support services fees that total less than \$10,000
- 86% have private investigator, mitigation specialist, expert, and attorney support services fees that total less than \$20,000

#### 2. While Potentially Capital Attorney Expenditures Have Remained Stable, Proceeded Capital and Non-Capital Average Case Costs Have Risen (p. 8-11, 14-26)

Overall, annual attorney expenditures in potentially capital cases have remained stable between FY07 and FY15 (\$11.0 million and \$10.9 million respectively). However, the average case cost has risen at a relatively consistent rate for both proceeded capital and proceeded non-capital cases.

	FY02-FY06	FY07-FY15 YTD
Average Cost Proceeded Capital	\$58,592	\$93,231
Average Cost Proceeded Non-Capital	\$14,170	\$21,022



Although average case cost has increased, overall expenditures have remained stable as a result of a significant reduction in the percentage of potentially capital cases that prosecutors have elected to proceed capitally, from a high of 28.1% in FY08 to a low of 11.0% in FY13.

Two primary factors have contributed to the increase in case costs: 1) a temporary 11.8% increase in the PAC hourly rate for capital trial work, which was reduced in FY11, and 2) a 19% increase in the average number of attorney hours worked per case.

- *Hourly Rate Increase:* The average cost of a case rose due to the increase in the attorney hourly rate beginning in FY07, peaked in FY12, and has been steadily declining since due to the subsequent rate reductions that occurred in FY11.
- *Increase in Average Attorney Hours per Case:* The study identified a number of factors driving the increase in attorney hours per case, including changes to forensic technologies, the need to ensure the accuracy of testing procedures and reporting by the State Crime Lab, an increase in the use of digital evidence in prosecutions that has increased the volume and complexity of discovery attorneys need to review, and an increase in the length of time cases are taking to dispose, partly due to the increased demand for forensic testing that has caused backlogs at the State Crime Lab.

While a number of factors are driving the increase in the average number of attorney hours per case, two factors appear to be particularly significant:

- *Enhanced Forensic Technologies and Errors in Forensic Analysis:* Enhanced forensic technologies, such as innovations in DNA testing, have significantly increased the prosecutorial demand for lab testing, which in turn has required defense counsel to perform forensic examinations of case evidence and to enlist the expertise of forensic experts. Cases that involve the application of one or more forensic science are often more complicated and require additional attorney time. Moreover, backlogs at the State Crime Lab and the exposure of serious errors in forensic testing procedures and reporting have required defense counsel to scrutinize forensic evidence more carefully and to challenge problematic procedures.
  - ✓ In FY02, fewer than 1 in 20 potentially capital cases required a forensic expert. By FY15, just under 1 in 5 required one or more forensic experts.
  - ✓ Today, forensic evidence that warrants the assistance of one or more forensic experts adds between \$10,425 to \$18,745 to the cost of a potentially capital case in additional attorney time.
  - ✓ Cases that warrant a forensic expert's assistance have, on average, at least three times the number of expert types per case regardless of the capital status of the case.
- *Increase in Digital Evidence:* The shift to digital media and the corresponding increased availability of video, audio, and DVD recordings, including multiple iterations of many of the recordings, has increased the volume and complexity of evidence in cases. While digital evidence has many benefits, it has also led to increased attorney time to review the material to fully investigate the facts of a case.

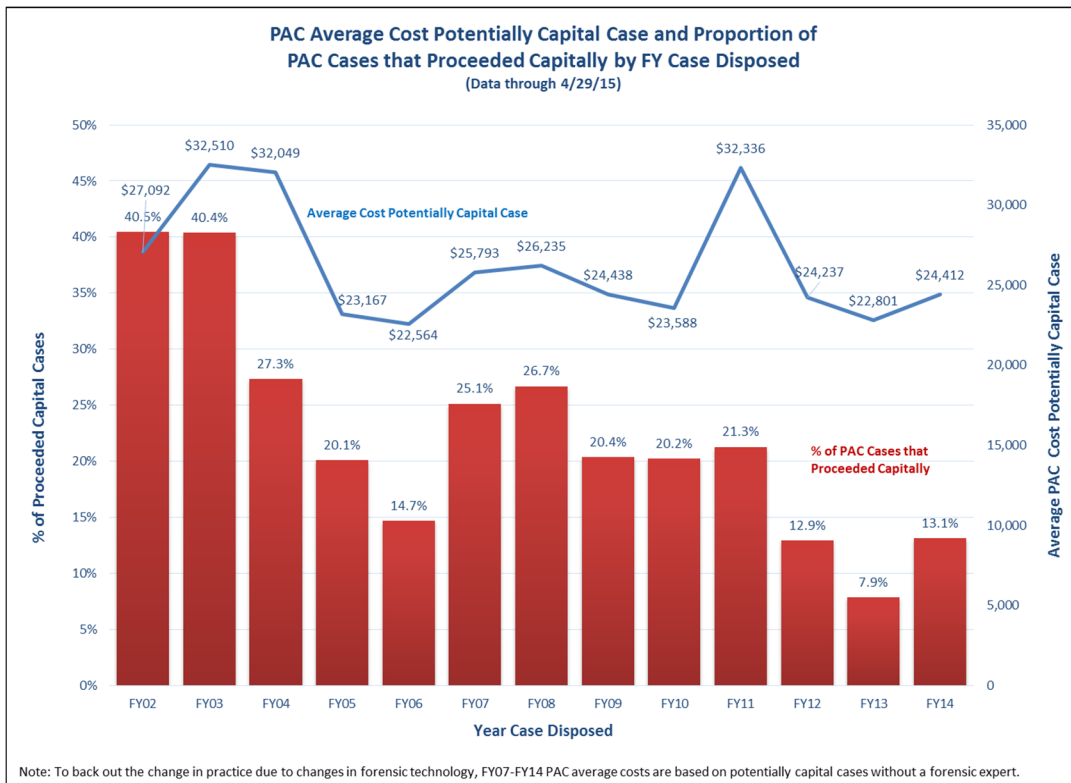
### **3. IDS Capital Costs Are Driven by DA Decisions (p. 28-31)**

The two primary factors that drive IDS' expenditures in potentially capital cases at the trial level are whether the DA decides to prosecute the case as capital or non-capital and the practice in North Carolina of charging most alleged intentional homicides as first degree or undesignated murder, even though more than 83% of these cases are eventually disposed as second degree or less.

First, the DA’s decision whether to seek the death penalty is the paramount factor driving capital case costs, regardless of whether the case ends in a trial, plea, or dismissal. Cases in which the defendant faced the death penalty cost at least 4 times more than cases in which the defendant faced life without parole. Between FY07 and FY15 YTD, the average cost of a proceeded capital case was \$93,231 compared to \$21,022 for a proceeded non-capital case. And, although the percentage of proceeded capital cases has significantly dropped over the last 9 years, which has kept capital trial expenditures for both the state and the defense significantly lower than they would have been, 83.6% of all potentially capital cases and 58.1% of all proceeded capital cases are still eventually disposed as second degree murder or less.

Second, North Carolina has a tradition of charging most alleged intentional homicides as first degree or undesignated murder, rather than second degree murder or voluntary manslaughter. Treating most intentional homicides as if they were first degree murder, or failing to designate the murder charge, has been one of the primary factors driving the cost of indigent defense expenditures in potentially capital cases. Between FY07 and FY15, the average cost of a potentially capital case was \$34,666, compared to an average cost of \$2,338 for a second degree murder case (a B2 felony) or \$1,023 for a voluntary manslaughter case (a D felony).<sup>1</sup>

The graph below shows how the cost of a potentially capital case is driven by the rate at which prosecutors decide to seek the death penalty. The bars on the graph show the percentage of all potentially capital cases that proceeded capitally, while the graph line shows the average cost of a potentially capital case. In order to isolate the impact of seeking the death penalty on potentially capital case costs and exclude the impact of forensic evidence on case costs, the study analyzed potentially capital cases without a forensic expert. As the graph shows, the average cost of a potentially capital case decreases significantly when prosecutors seek the death penalty less often.



<sup>1</sup> Felony B1 and Felony D average PAC case costs calculated using cases disposed between July 1, 2008 and April, 29, 2015.

#### 4. Dispositions in Potentially Capital Cases at the Trial Level Indicate that IDS, the DAs, and Other Court Actors Could Work Together to Reduce Spending (p. 28-31)

North Carolina is spending unnecessary taxpayer dollars by charging cases as first degree or undesignated murder and prosecuting them as potentially capital cases when most are disposed at a much lower level. Of all potentially capital cases disposed between FY07 and FY15 YTD<sup>2</sup>:

- 83.6% ended in a conviction of second degree murder or less.
- 11.7% ended in a voluntary dismissal, no true bill, or no probable cause finding.
- 45.7% ended in a conviction of *less* than second degree murder.

For proceeded capital cases:

- 58.1% ended in a conviction of second degree murder or less.
- 20.1% ended in a conviction of *less* than second degree murder.
- 2.2% ended in a death verdict.

#### 5. IDS and the Office of the Capital Defender Have Implemented Policies to Manage Capital Trial Case Costs (p. 6-7, 20, 28)

IDS and the Office of the Capital Defender have initiated policies to manage costs without sacrificing quality representation to clients.

- *Introduction of Two-Tiered Attorney Hourly Rate System:* In January 2011, IDS adopted a two-tiered payment structure in potentially capital cases, which lowered the attorney hourly rate for potentially capital cases from \$95 to \$85 when the case is declared non-capital or for cases in which a year has passed without the case being declared capital by the prosecution. In May 2011, attorney rates for capital trial work were further reduced to \$85 and \$75.
- *Pre-trial Spending Limits:* For cases with a warrant date on or after January 1, 2009, IDS set pre-trial spending limits for attorneys and some defense experts in potentially capital cases. To exceed the established pre-trial spending limits, attorneys must present evidence as to the exceptional nature of the case and have the case declared exceptional by the IDS Director.
- *Pre-trial Budget Requirements for Attorneys:* Beginning in FY13, IDS requires attorneys working on the most complex and costly potentially capital cases to develop pre-trial budgets for IDS approval.
- *Standardized Hourly Rates for Experts:* In FY12, at the direction of the North Carolina General Assembly, AOC and IDS initiated standardized hourly rates for private investigators, mitigation specialists, and experts by expert type for both the prosecution and indigent defense.
- *Notice to IDS and Opportunity to be Heard if Attorney Seeks Expert Funding Following IDS Denial:* For constitutional reasons, the IDS Rules allow attorneys to seek expert funding from a judge following a denial of funding by IDS. The IDS Commission recently revised those rules to require that counsel give IDS advance notice of any such request so that IDS can ensure that all relevant information is before the Court.

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<sup>2</sup> Excludes Voluntary Dismissal with Leave, Abated, Not Competent to Proceed, and Not Guilty By Reason of Insanity dispositions.

- *Expansion of Public Defender and Office of the Capital Defender Capital Trial Work:* IDS has been expanding the use of Assistant Public Defenders and the Office of the Capital Defender in capital trial work to decrease expenditures on private assigned counsel.
- *Reduce Travel-Related Case Costs:* As a result of this study's finding that one-fourth of the potentially capital cases disposed between FY07 and FY15 involved at least 1,000 miles of attorney travel, the Office of the Capital Defender is striving to appoint local counsel as often as possible without sacrificing quality representation. The office also is actively recruiting attorneys in counties where there are not enough local attorneys on the capital rosters to cover the caseload.
- *Strategies to More Efficiently Manage the Volume of Digital Evidence:* IDS and the Office of the Capital Defender are exploring strategies and practices that might reduce discovery-related costs, such as the use of transcriptionists to transcribe audio recordings to text.

## FY15 Capital Trial Case Study Potentially Capital Case Costs at the Trial Level

### Introduction

This study examines case costs, including private assigned counsel and expert fees, and case outcomes for potentially capital trial cases disposed between FY07 and FY15 YTD (as of 4/29/2015) to understand the factors that drive indigent defense spending in these cases. IDS conducted a previous capital trial study in FY08 that looked at potentially capital trial case costs for cases disposed between FY02 to FY06. This study includes comparable data findings from FY07 to FY15 YTD.

Since the previous capital study, a number of policies affecting potentially capital trial cases have been implemented to improve capital representation and to control costs, including:

- *Introduction of Two-Tiered Attorney Hourly Rate System:* In January 2011, to contain indigent defense costs and in recognition that the removal of the death penalty as a potential outcome reduces the complexity of potentially capital cases, IDS adopted a two-tiered payment structure in those cases. The new system lowered the attorney hourly rate for potentially capital cases from \$95 to \$85 when the case is declared non-capital or for cases in which a year has passed without the case being declared capital by the prosecution.
- *Attorney Hourly Rate Changes:* In recognition of the expertise needed when attorneys are appointed to represent clients facing death and life without parole (LWOP) sentences, IDS raised attorney hourly rates from \$85 to \$95 for work performed on or after August 1, 2006, when the North Carolina General Assembly was able to provide IDS the funding to do so. In FY11, in light of significant reductions to IDS' appropriations, attorney hourly rates in potentially capital cases were reduced from \$95/\$85 to \$85/\$75 for appointments on or after May 2, 2011.
- *Pre-trial Spending Limits:* For cases with a warrant date on or after January 1, 2009, IDS set pre-trial spending limits for attorneys (\$35,000 per attorney) and some defense experts (\$10,000 for investigators and mitigation specialists) appointed to potentially capital cases. To exceed the established pre-trial spending limits, attorneys must present evidence as to the exceptional nature of the case and have the case declared exceptional by the IDS Director.
- *Pre-trial Budget Requirements for Attorneys:* Beginning in FY13, IDS requires attorneys working on the most complex and costly potentially capital cases to develop pre-trial budgets for IDS approval.
- *Standardized Hourly Rates for Experts:* In FY12, at the direction of the North Carolina General Assembly, AOC and IDS initiated standardized hourly rates for private investigators, mitigation specialists, and experts by expert type for both the prosecution and indigent defense.
- *Notice to IDS and Opportunity to be Heard if Attorney Seeks Expert Funding Following IDS Denial:* For constitutional reasons, the IDS Rules allow attorneys to seek expert funding from a judge following a denial of funding by IDS. The IDS Commission recently revised those rules to require that counsel give IDS advance notice of any such request so that IDS can ensure that all relevant information is before the Court.

- *Expansion of Public Defender and Office of the Capital Defender Capital Trial Work:* IDS has been expanding the use of Assistant Public Defenders and the Office of the Capital Defender in capital trial work to decrease expenditures on private assigned counsel. In FY02, 24% of potentially capital cases had at least one public defender, assistant public defender, or assistant capital defender appointed to the case. By FY14, 33% of potentially capital cases had at least one salaried attorney appointed to the case.
- *Capital Trial Attorney Training Initiatives:* IDS obtained grant funds to develop and offer programs designed to train new attorneys to handle potentially capital cases and to provide existing capital attorneys with targeted training opportunities.

## Definition of Terms

The following definitions apply to terms used throughout this report:

- *PAC:* Refers to private appointed counsel.
- *Potentially Capital Cases at the Trial Level:* Includes all cases charged as first degree murder or undesignated degree of murder, except those cases in which the defendant was a juvenile at the time of the offense and not potentially punishable by death. *See* IDS Rule 2A.1. One case equals one disposition and there may be more than one disposition over the lifetime of a defendant's case. For example, a defendant can be convicted and sentenced, then upon appeal, the appellate court may grant relief and send the case back to the trial level for a new trial or sentencing hearing. Each disposition counts as a separate case.
- *Proceeded Capital:* Refers to a subset of potentially capital cases at the trial level in which two appointed attorneys worked on the case simultaneously at any given point in time.
- *Proceeded Non-Capital:* Refers to a subset of potentially capital cases at the trial level in which no more than one appointed attorney worked on the case at any given point in time.
- *Expert Expenditures:* Includes expenditures on all experts and attorney support services (e.g. paralegals) in potentially capital cases at the trial level unless specifically referred to as "experts only," in which case attorney support services are not included.
- *PD and CD Cases:* Cases with at least one Public Defender, Assistant Public Defender, or Assistant Capital Defender appointed to the case.
- *Retained Cases:* Cases in which the defendant was represented by a retained attorney for at least part of the time. IDS will never have complete cost information for these cases.
- *Average Case Expenditures:* Expenditures in all cases where PAC handled the case, including retained cases where IDS made partial expenditures based on a court's indigency determination. Includes all closed cases in which the deadline to submit fees, including late waivers, has passed.

## Key Findings

### 1. Annual Attorney Expenditures in Potentially Capital Cases Remain Stable

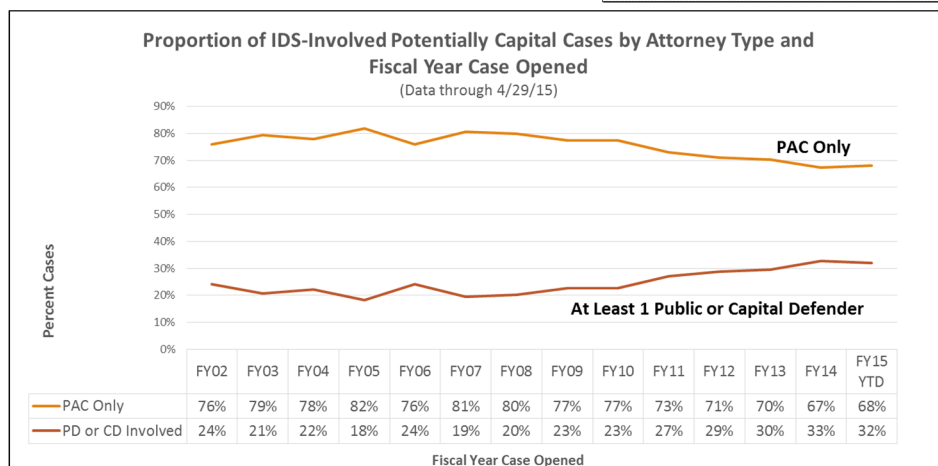
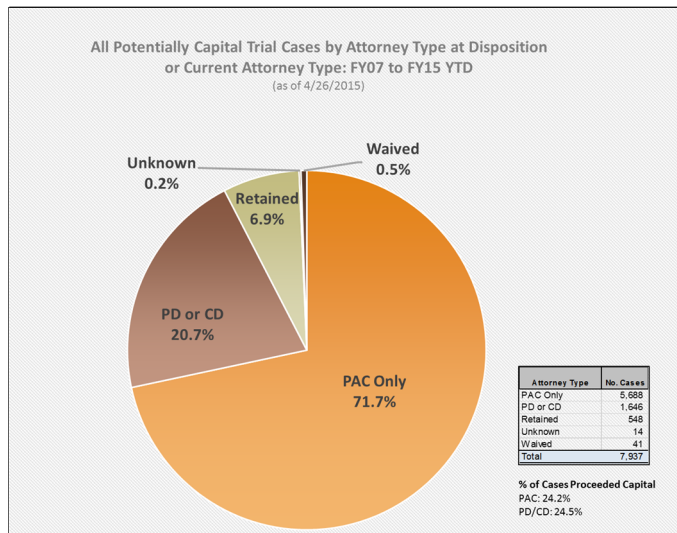
Overall, annual attorney expenditures in potentially capital cases at the trial level remained quite stable between FY07 and FY15. However, during that time period, the Office of the Capital Defender (OCD) added new attorney positions, which shifted capital trial work from PAC to OCD salaried attorneys. Combined, PAC and OCD capital attorney expenditures decreased slightly between FY07 and FY15. As the new attorneys in OCD acquire full caseloads and dispose of cases, additional savings should be generated in the future.

Change in Annual Expenditures in Potentially Capital Trial Cases by Type of Attorney: FY07 to FY15			
	FY07	FY15	% change
PAC Potentially Capital Trial	\$9,438,298	\$7,878,516	-16.5%
Office of the Capital Defender	\$1,558,021	\$2,985,746	91.6%
<b>Total</b>	<b>\$10,996,319</b>	<b>\$10,864,262</b>	<b>-1.2%</b>

Note: Office of the Capital Defender expenditures includes in-house support staff, investigator, and mitigation specialist costs.

### 2. Expanded Public and Capital Defender Role in Capital Trial Work

Between FY07 and FY15, the majority of potentially capital cases were handled by PAC. The pie chart to the right shows the distribution of cases by attorney type. Few potentially capital cases were handled solely by retained attorneys or were cases in which counsel was waived (6.9% and 0.5% respectively).



### 3. PAC Potentially Capital Case Costs Have Risen Since the FY08 Study

Between FY07 and FY15, the hourly rates for PAC handling potentially capital cases increased and then decreased as IDS' appropriations increased and decreased. In FY07, PAC hourly rates were raised from \$85 per hour to \$95 per hour (or 11.8%). In FY11, hourly rates were reduced from \$95 to \$85/\$75 after the introduction of a two-tiered hourly rate system. Given the increase in the rates in FY07 and the fact that the subsequent rate reductions were not retroactive, it is not unexpected that potentially capital case costs increased between FY07 and FY15.

	FY02-FY06	FY07-FY15 YTD
• 50% of potentially capital cases cost	\$14,400	\$18,500
• 75% of potentially capital cases cost	\$30,500	\$37,500
• 90% of potentially capital cases cost	\$64,500	\$74,046

The table below summarizes the average cost of potentially capital trial cases by the year the case was disposed and whether the DA proceeded capitally or non-capitally. Costs include all PAC costs in a case, including all attorney and expert fees and expenses. Expenditures on cases handled by public defenders and capital defenders are not included because those attorneys are paid by salary and hours data is not available for the entire study period. The data shows the average cost of a potentially capital case rising for several years, peaking in FY11, and then declining, which reflects the changes in attorney hourly rates. The table on page 11 presents more detailed data by the year the case was disposed, capital status, and type of disposition. Data for 2015 is as of April month end.

Potentially Capital Trial Cases by Fiscal Year Disposed and Capital Status: FY07 to FY15 (YTD)									
	All Potentially Capital			Proceeded Capital			Proceeded Non-Capital		
	All Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost
FY07	337	\$ 31,441	\$ 15,529	86	\$ 75,144	\$ 53,520	251	\$ 16,467	\$ 11,656
FY08	405	\$ 34,199	\$ 16,746	110	\$ 81,468	\$ 50,058	295	\$ 16,573	\$ 12,000
FY09	381	\$ 32,645	\$ 15,743	79	\$ 90,162	\$ 58,898	302	\$ 17,599	\$ 11,793
FY10	346	\$ 32,623	\$ 18,821	71	\$ 83,455	\$ 49,199	275	\$ 19,499	\$ 14,650
FY11	327	\$ 41,282	\$ 22,106	70	\$ 97,750	\$ 68,385	257	\$ 25,902	\$ 18,154
FY12	322	\$ 38,323	\$ 20,860	42	\$ 133,617	\$ 101,476	280	\$ 24,029	\$ 18,009
FY13	289	\$ 33,437	\$ 20,179	23	\$ 125,509	\$ 78,636	266	\$ 25,476	\$ 19,226
FY14	260	\$ 36,336	\$ 20,427	34	\$ 118,298	\$ 68,197	226	\$ 24,005	\$ 16,739
FY15 YTD	159	\$ 30,477	\$ 14,269	19	\$ 102,626	\$ 63,809	140	\$ 20,685	\$ 12,536
All Years	2,826	\$ 34,666	\$ 18,346	534	\$ 93,231	\$ 60,286	2,292	\$ 21,022	\$ 14,920

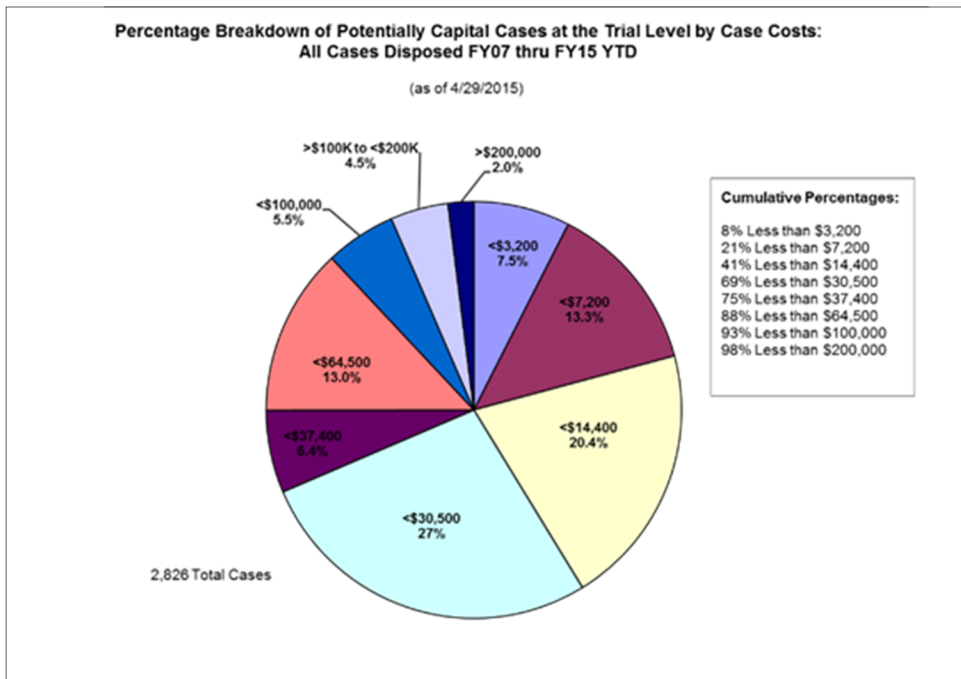
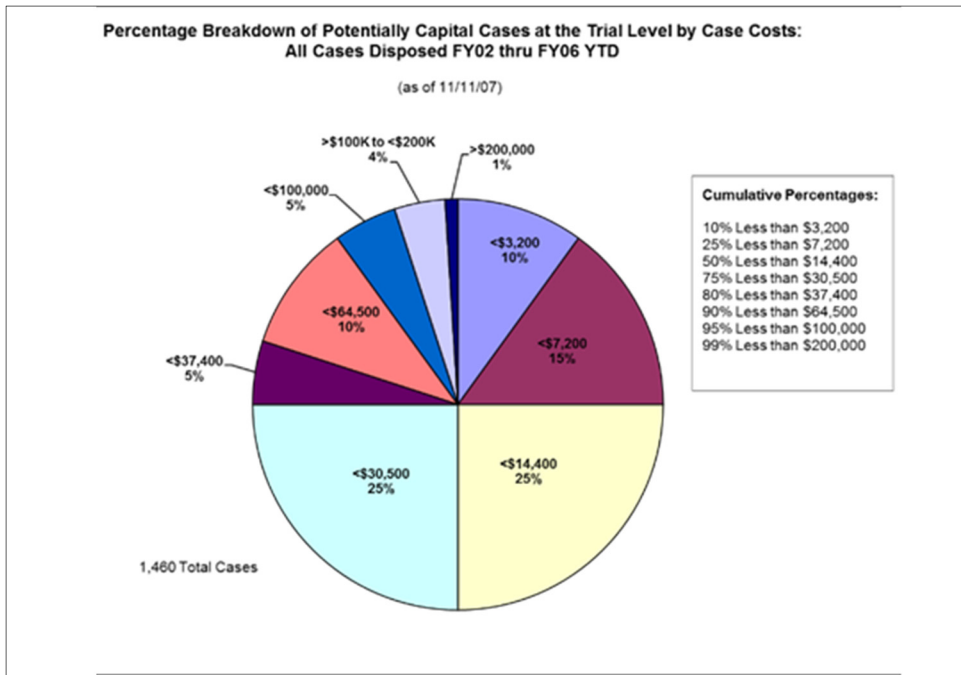
Graphical Representation of Change in Growth	All Potentially Capital			Proceeded Capital			Proceeded Non-Capital		



**PAC Distribution of Case Costs Has Not Changed**

Although the cost per case rose between FY07 and FY15, the frequency distribution of case costs has remained relatively stable from the prior study period of FY02 to FY06.

The pie charts below compare case costs during FY02 to FY06 and FY07 to FY15, and show that the frequency distribution of case costs has remained relatively constant. The reason the frequency distribution has remained relatively unchanged, despite the rise in average case costs, is that there was a change in the proportion of proceeded capital to proceeded non-capital cases. The number of proceeded capital cases has significantly declined between FY07 and FY15.

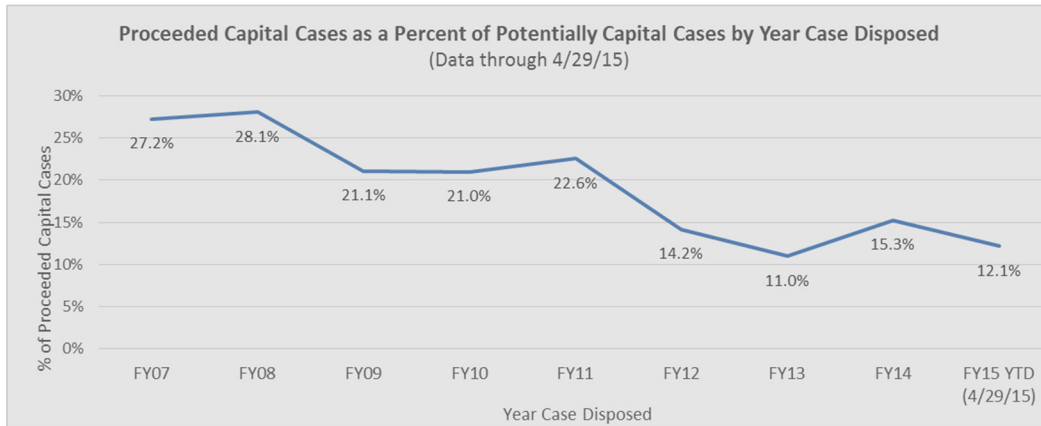


Potentially Capital Trial Cases by Fiscal Year Disposed and Capital Status: FY07 to FY15 (YTD)											
		Potentially Capital			Proceeded Capital			Proceeded Non-Capital			
		No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	
Resentencing	FY07	2	\$ 122,010	\$ 122,010	2	\$ 122,010	\$ 122,010				
	FY08	1	\$ 1,265	\$ 1,265	1	\$ 1,265	\$ 1,265				
	FY09										
	FY10										
	FY11	2	\$ 84,577	\$ 84,577	1	\$ 166,443	\$ 166,443	1	\$ 2,711	\$ 2,711	
	FY12										
	FY13										
	FY14										
	FY15 YTD										
	All Years	5	\$ 82,888	\$ 2,711	4	\$ 102,932	\$ 84,542	1	\$ 2,711	\$ 2,711	
Trials	FY07	42	\$ 73,019	\$ 42,870	15	\$ 150,891	\$ 116,766	27	\$ 29,756	\$ 21,991	
	FY08	73	\$ 75,489	\$ 32,609	25	\$ 163,268	\$ 114,519	48	\$ 29,771	\$ 26,179	
	FY09	60	\$ 65,576	\$ 33,725	12	\$ 184,827	\$ 160,082	48	\$ 35,763	\$ 28,839	
	FY10	62	\$ 62,394	\$ 41,753	16	\$ 129,416	\$ 77,004	46	\$ 39,083	\$ 35,999	
	FY11	58	\$ 90,950	\$ 49,347	14	\$ 196,175	\$ 95,025	44	\$ 57,470	\$ 42,741	
	FY12	53	\$ 93,131	\$ 48,629	14	\$ 220,892	\$ 125,986	39	\$ 47,268	\$ 40,740	
	FY13	42	\$ 78,560	\$ 43,435	4	\$ 293,394	\$ 317,685	38	\$ 55,946	\$ 39,938	
	FY14	40	\$ 86,237	\$ 40,596	5	\$ 396,889	\$ 320,802	35	\$ 41,858	\$ 38,343	
		FY15 YTD	23	\$ 70,072	\$ 28,575	4	\$ 240,973	\$ 246,781	19	\$ 34,093	\$ 22,681
		All Years	453	\$ 77,157	\$ 41,320	109	\$ 188,940	\$ 121,636	344	\$ 41,738	\$ 32,678
Pleas	FY07	249	\$ 27,508	\$ 14,515	66	\$ 59,247	\$ 43,313	183	\$ 16,061	\$ 11,656	
	FY08	274	\$ 26,421	\$ 15,374	77	\$ 56,653	\$ 44,658	197	\$ 14,605	\$ 11,708	
	FY09	248	\$ 29,970	\$ 14,720	62	\$ 77,758	\$ 56,250	186	\$ 14,041	\$ 11,162	
	FY10	234	\$ 27,201	\$ 17,192	45	\$ 70,096	\$ 47,645	189	\$ 16,988	\$ 13,316	
	FY11	228	\$ 32,288	\$ 19,328	54	\$ 71,385	\$ 61,082	174	\$ 20,154	\$ 15,415	
	FY12	221	\$ 29,595	\$ 19,354	27	\$ 92,486	\$ 92,025	194	\$ 20,842	\$ 17,109	
	FY13	210	\$ 27,244	\$ 19,532	18	\$ 83,729	\$ 76,114	192	\$ 21,948	\$ 18,739	
	FY14	203	\$ 27,839	\$ 17,809	28	\$ 71,300	\$ 62,948	175	\$ 20,885	\$ 15,245	
		FY15 YTD	116	\$ 25,449	\$ 13,492	13	\$ 74,639	\$ 57,757	103	\$ 19,240	\$ 11,425
		All Years	1,983	\$ 28,297	\$ 16,783	390	\$ 69,420	\$ 54,507	1,593	\$ 18,229	\$ 13,533
Dismissals & Abated	FY07	44	\$ 18,292	\$ 9,583	3	.	.	41	\$ 17,894	\$ 9,136	
	FY08	56	\$ 51,838	\$ 35,711	6	\$ 174,298	\$ 172,203	50	\$ 32,405	\$ 30,293	
	FY09	72	\$ 36,631	\$ 23,645	5	.	.	67	\$ 36,393	\$ 23,056	
	FY10	50	\$ 41,883	\$ 21,274	10	\$ 112,808	\$ 59,339	40	\$ 20,193	\$ 17,509	
	FY11	38	\$ 52,902	\$ 43,775	1	.	.	37	\$ 33,593	\$ 26,889	
	FY12	47	\$ 51,507	\$ 35,958	1	.	.	46	\$ 51,344	\$ 35,146	
	FY13	36	\$ 54,174	\$ 12,769	1	.	.	35	\$ 27,196	\$ 12,707	
	FY14	17	\$ 63,799	\$ 54,598	1	.	.	16	\$ 61,710	\$ 53,804	
		FY15 YTD	20	\$ 26,859	\$ 23,073	2	.	.	18	\$ 27,662	\$ 23,073
		All Years	380	\$ 46,740	\$ 24,194	30	\$ 149,883	\$ 93,976	350	\$ 35,063	\$ 20,680
Unknown (incl Other)	FY07										
	FY08	1	\$ 12,453	\$ 12,453	1	\$ 12,453	\$ 12,453				
	FY09	1	\$ 42,885	\$ 42,885				1	\$ 42,885	\$ 42,885	
	FY10										
	FY11	1	\$ -	\$ -				1	\$ -	\$ -	
	FY12	1	\$ 2,125	\$ 2,125				1	\$ 2,125	\$ 2,125	
	FY13	1	\$ 42,698	\$ 42,698				1	\$ 42,698	\$ 42,698	
		FY14									
	FY15 YTD										
	All Years	5	\$ 20,032	\$ 12,453	1	\$ 12,453	\$ 12,453	4	\$ 21,927	\$ 22,412	
All Cases	FY07	337	\$ 31,441	\$ 15,529	86	\$ 75,144	\$ 53,520	251	\$ 16,467	\$ 11,656	
	FY08	405	\$ 34,199	\$ 16,746	110	\$ 81,468	\$ 50,058	295	\$ 16,573	\$ 12,000	
	FY09	381	\$ 32,645	\$ 15,743	79	\$ 90,162	\$ 58,898	302	\$ 17,599	\$ 11,793	
	FY10	346	\$ 32,623	\$ 18,821	71	\$ 83,455	\$ 49,199	275	\$ 19,499	\$ 14,650	
	FY11	327	\$ 41,282	\$ 22,106	70	\$ 97,750	\$ 68,385	257	\$ 25,902	\$ 18,154	
	FY12	322	\$ 38,323	\$ 20,860	42	\$ 133,617	\$ 101,476	280	\$ 24,029	\$ 18,009	
	FY13	289	\$ 33,437	\$ 20,179	23	\$ 125,509	\$ 78,636	266	\$ 25,476	\$ 19,226	
	FY14	260	\$ 36,336	\$ 20,427	34	\$ 118,298	\$ 68,197	226	\$ 24,005	\$ 16,739	
		FY15 YTD	159	\$ 30,477	\$ 14,269	19	\$ 102,626	\$ 63,809	140	\$ 20,685	\$ 12,536
		All Years	2,826	\$ 34,666	\$ 18,346	534	\$ 93,231	\$ 60,286	2,292	\$ 21,022	\$ 14,920

\* Dismissals & Abated include voluntary dismissal, abated, not competent to proceed, not guilty by reason of insanity, and dismissal with leave case dispositions.

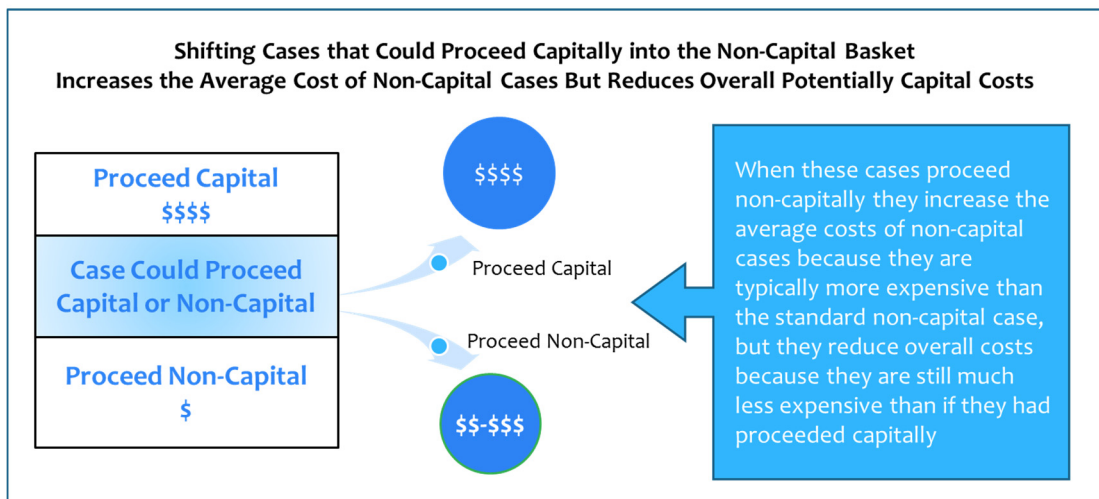
**Fewer Cases Are Proceeding Capitally**

The table below shows the percentage of potentially capital cases that proceeded capital each fiscal year. The proportion of proceeded capital to proceeded non-capital cases has declined significantly. Since proceeded capital cases are, on average, approximately 4 times more expensive than proceeded non-capital cases (\$93,231 compared to \$21,022), the reduction in the number of proceeded capital cases has resulted in relatively stable potentially capital case costs despite rising average case costs.



**The Shift to a Larger Proportion of Cases Proceeding Non-Capitally Reduces Overall Costs But Increases the Average Cost of a Non-Capital Case**

When the percentage of cases that proceed capitally decreases, the overall cost of potentially capital cases decreases as well. In addition, that is a more efficient use of resources given that 83% of potentially capital cases and 50% of proceeded capital cases end in a conviction of second degree murder or less. However, this shift increases the average cost of proceeded non-capital cases. Cases that fall into a grey area and could proceed either capitally or non-capitally are typically more complex than the standard proceeded non-capital cases and require more investigation and work by both prosecution and defense counsel. When a higher percentage of these more complex cases end up proceeding non-capitally, these cases will cost more than the standard proceeded non-capital case but significantly less than cases that proceed capitally. The net effect is a decrease in the average cost of a potentially capital case, but the secondary effect is an increase in the average cost of a proceeded non-capital case.



A comparison of the average case costs of potentially capital cases during the study period of FY02 to FY06, when the percentage of potentially capital cases that proceeded capitally was significantly higher, to FY07 to FY15 YTD reflects a net decrease of 9% in the average cost of a potentially capital case, despite an 11.8% increase in the PAC attorney hourly rate, but a 26% increase in the average cost of a proceeded non-capital case.

	FY02-FY06	FY07-FY15 YTD	% Change	
Potentially Capital	\$27,834	\$25,338	↓ 9.0%	<b>Net Effect</b>
Proceeded Capital	\$ 58,592	\$64,198	↑ 9.6%	Effects include FY07-FY15YTD 11.8% rate increase
Proceeded Non-Capital	\$ 14,170	\$17,864	↑ 26.1%	<b>Secondary Effect</b>

Note: In order to isolate the impact enhancements in forensic technologies have had on potentially capital case costs, FY07-FY15YTD cases excluded cases requiring one or more forensic experts.

#### 4. The High Profile Expensive Potentially Capital Cases at the Trial Level Remain the Exception

While the media and others tend to focus on the few cases that have a higher price tag, 75% of all potentially capital cases at the trial level disposed between FY07 and FY15 cost less than \$37,500, including PAC and experts. If every cent was spent on attorney fees, that would represent less than 13 weeks of an attorney’s time on a case where the defendant is potentially facing death or life imprisonment without the possibility of parole. In fact, 50% of all potentially capital cases at the trial level cost less than \$18,500, which, at most, is approximately 6 weeks of an attorney’s time. And 90% of all potentially capital cases cost less than \$74,046, which, at most, is 25 weeks of an attorney’s time.<sup>3</sup>

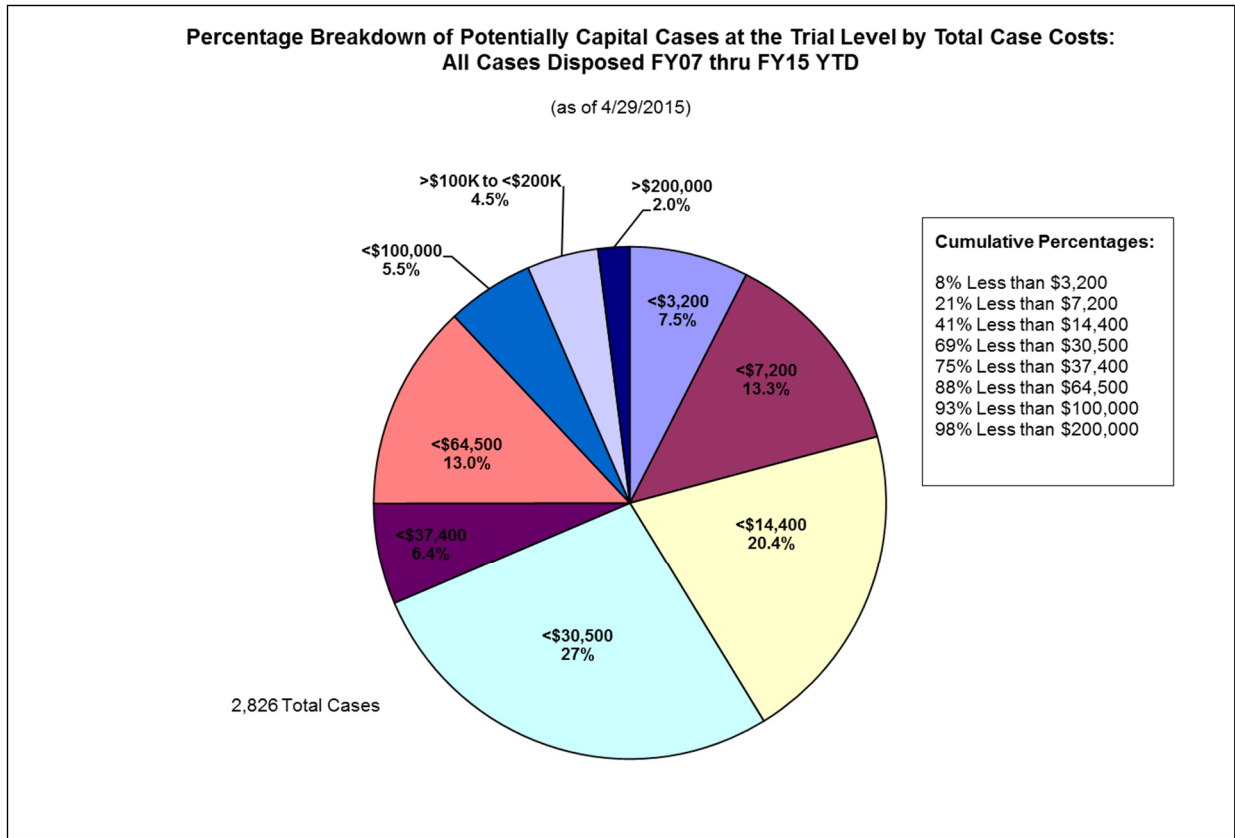
**50% of all potentially capital cases at the trial level cost less than \$18,500.**

<sup>3</sup> By comparison, between 1998 and 2004, the average cost of defense representation in federal death-eligible cases was \$491,905 for proceeded capital cases and \$76,665 for proceeded non-capital cases. However, as of that date, the Federal Administrative Office of the Courts paid defense attorneys working on death eligible cases \$125 per hour, which was significantly higher than the \$85 rate paid by IDS for work performed before August 1, 2006. Adjusting the average cost of death-eligible cases to reflect a \$85 rate, rather than a \$125 rate, the average cost per case was:

	<b>Federal Average (Adj. \$85/hr) (1998-2004)</b>	<b>North Carolina Average (FY02-FY06)</b>
Proceeded Capital	\$375,497	\$58,592
Proceeded Non-Capital	\$56,717	\$14,170

As of January 1, 2015, the Federal AOC now pays defense attorneys working on death eligible cases \$181 per hour.  
Source: June, 2008. United States Judicial Conference Committee on Defender Services, *Update on the Cost, Quality, and Availability of Defense Representation in Federal Death Penalty Cases: Preliminary Report on Phase One of the Research.*

A cost comparison between FY02 to FY06 and FY07 to FY15 shows that there has been an increase in the most expensive potentially capital cases, from 1% to 2%, and that the average cost of these cases has risen from \$295,225 to \$344,274.



**5. Factors Driving the Increase in Proceeded Capital and Non-Capital Average Case Costs**

**Increases in the PAC Hourly Rate**

During FY07 to FY15, the average cost of a proceeded capital case rose from the FY02 to FY06 average of \$58,592 to \$93,231 (or 59%) and the average cost of a proceeded non-capital case rose from \$14,170 to \$21,022 (or 48%). While increases in the attorney hourly rate are responsible for a significant portion of the increases in proceeded capital and proceeded non-capital case costs, they do not account for all of the increases. The increase in the attorney capital hourly rate from \$85 to \$95 represents an 11.8% increase.

**PAC Capital Trial Attorneys Are Working More Hours per Case**

The table below shows the change in the average and median attorney hours paid per case, as well as changes in the frequency distribution of attorney hours per case. On average, attorney hours paid per case rose from 253 hours to 301.6 hours (or by 19%) from FY07 to FY14.

PAC Only Attorney Hours Paid per Case for Potentially Capital Trial Cases Disposed with All Fees Known Between FY02 and FY14																
	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	Graphical Representation of Data	FY07 to FY14 Change	
No. Cases	353	352	344	354	312	324	386	370	338	320	304	275	247			
Average	216.6	195.3	271.5	226.7	249.0	253.4	259.6	235.3	245.8	296.0	297.9	261.2	301.6		19.0%	
Median	107.9	117.0	146.8	122.8	132.7	120.6	135.9	115.8	141.4	160.1	169.0	173.7	173.7		44.0%	
Percentiles	10	21.3	28.9	37.9	28.8	32.8	30.1	39.2	29.7	39.0	41.0	43.5	54.0	53.6		78.1%
	20	31.9	47.8	59.3	47.2	50.6	54.8	64.6	50.2	57.7	64.8	67.7	78.1	83.7		52.8%
	30	52.5	64.7	91.0	75.3	77.4	72.8	82.3	65.6	78.1	98.2	98.6	108.3	107.4		47.6%
	40	75.4	94.1	118.5	96.0	107.1	99.1	107.1	89.9	110.8	126.9	140.6	142.3	138.6		39.9%
	50	107.9	117.0	146.8	122.8	132.7	120.6	135.9	115.8	141.4	160.1	169.0	173.7	173.7		44.0%
	60	143.8	148.8	208.6	159.6	179.0	157.9	179.7	151.2	188.8	213.3	209.5	214.0	258.8		63.9%
	70	208.4	186.4	286.6	208.4	243.8	231.6	225.8	209.2	238.3	290.2	273.3	253.7	329.7		42.3%
	80	321.4	300.4	409.9	309.5	326.9	352.5	321.5	307.7	320.8	412.7	365.7	353.4	404.8		14.8%
	90	589.5	484.7	614.3	507.5	573.1	593.7	553.8	549.4	468.5	634.3	582.5	536.5	579.6		-2.4%

The table on the following page provides detailed data on average attorney hours per case by fiscal year disposed, capital status, and type of disposition.

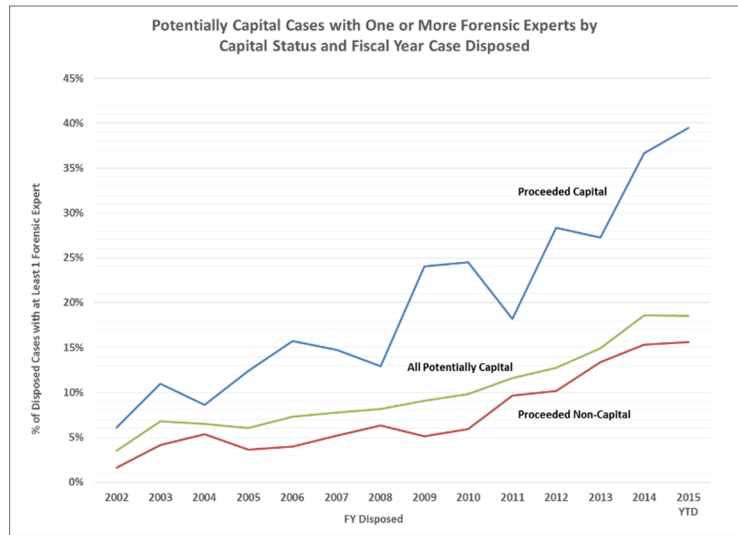
PAC Attorney Hours per Case in Potentially Capital Trial Cases by Fiscal Year Disposed and Capital Status: FY07 to FY15 YTD										
		Potentially Capital			Proceeded Capital			Proceeded Non-Capital		
		No. Cases	Avg. Hrs	Median Hrs	No. Cases	Avg. Hrs	Median Hrs	No. Cases	Avg. Hrs	Median Hrs
Resentencing	FY07	2	717.2	717.2	2	717.2	717.2			
	FY08	1	13.7	13.7	1	13.7	13.7			
	FY09									
	FY10									
	FY11	2	550.0	550.0	1	1,073.7	1,073.7	1	26.4	26.4
	FY12									
	FY13									
	FY14									
	FY15 YTD (4/29/15)									
<b>All Years</b>	<b>5</b>	<b>509.6</b>	<b>29.7</b>	<b>4</b>	<b>630.4</b>	<b>551.7</b>	<b>1</b>	<b>26.4</b>	<b>26.4</b>	
Trials	FY07	42	567.1	358.9	15	1,163.0	1,107.5	27	236.0	197.9
	FY08	73	572.1	269.5	25	1,165.8	739.5	48	249.4	221.9
	FY09	60	484.5	271.0	12	1,289.4	1,099.0	48	283.3	231.4
	FY10	62	485.7	313.1	16	1,001.3	639.6	46	302.4	253.4
	FY11	58	645.0	369.6	14	1,324.0	660.7	44	428.9	300.7
	FY12	53	684.9	352.0	14	1,601.3	942.7	39	355.9	306.8
	FY13	42	569.5	316.2	4	2,000.1	1,981.8	38	414.8	302.5
	FY14	40	656.5	393.2	5	2,743.2	2,302.5	35	358.4	345.2
	FY15 YTD (4/29/15)	23	609.8	337.2	4	1,601.4	1,633.5	19	362.0	267.0
	<b>All Years</b>	<b>453</b>	<b>579.9</b>	<b>324.9</b>	<b>109</b>	<b>1,350.1</b>	<b>911.8</b>	<b>344</b>	<b>330.8</b>	<b>263.9</b>
Pleas	FY07	249	220.6	115.7	66	455.8	334.5	183	132.9	92.0
	FY08	274	198.5	120.3	77	391.8	293.3	197	118.0	98.3
	FY09	248	211.0	103.2	62	508.5	384.1	186	109.0	89.3
	FY10	234	199.5	121.7	45	481.6	322.5	189	130.5	100.5
	FY11	228	225.8	141.0	54	468.5	394.3	174	149.1	110.1
	FY12	221	230.6	156.2	27	638.5	447.9	194	169.4	146.6
	FY13	210	216.1	165.7	18	562.1	526.5	192	182.5	157.8
	FY14	203	238.5	154.4	28	521.6	455.7	175	192.1	141.4
	FY15 YTD (4/29/15)	116	223.3	147.6	13	521.7	389.6	103	181.1	132.0
	<b>All Years</b>	<b>1,983</b>	<b>217.0</b>	<b>134.2</b>	<b>390</b>	<b>480.6</b>	<b>373.4</b>	<b>1,593</b>	<b>149.6</b>	<b>112.1</b>
Dismissals & Abated	FY07	44	191.3	137.9	3	.	.	41	182.7	132.1
	FY08	56	338.6	246.7	6	1,032.6	1,043.7	50	232.0	223.5
	FY09	72	263.1	183.6	5	.	.	67	258.8	182.8
	FY10	50	345.6	197.2	10	887.1	572.0	40	157.5	130.2
	FY11	38	398.3	338.3	1	.	.	37	319.4	259.3
	FY12	47	381.9	244.3	1	.	.	46	382.1	240.6
	FY13	36	427.4	139.8	1	.	.	35	253.0	138.0
	FY14	17	445.2	416.3	1	.	.	16	436.6	402.8
	FY15 YTD (4/29/15)	20	232.4	193.5	2	.	.	18	237.4	196.4
	<b>All Years</b>	<b>380</b>	<b>346.2</b>	<b>233.7</b>	<b>30</b>	<b>933.3</b>	<b>618.2</b>	<b>350</b>	<b>276.7</b>	<b>159.5</b>
Unknown	FY07									
	FY08	1	138.5	138.5	1	138.5	138.5			
	FY09	1	325.1	325.1				1	325.1	325.1
	FY10									
	FY11	1						1		
	FY12	1	28.0	28.0				1	28.0	28.0
	FY13	1	116.9	116.9				1	116.9	116.9
	FY14									
	FY15 YTD (4/29/15)									
<b>All Years</b>	<b>5</b>	<b>152.1</b>	<b>127.7</b>	<b>1</b>	<b>138.5</b>	<b>138.5</b>	<b>4</b>	<b>156.7</b>	<b>116.9</b>	
All Cases	FY02	360	216.6	107.9	153	387.7	264.7	207	88.7	56.8
	FY03	358	195.3	117.0	144	332.5	244.3	214	100.4	78.8
	FY04	351	271.5	146.8	137	475.1	357.3	214	138.4	96.0
	FY05	360	226.7	122.8	104	477.5	307.0	256	123.8	95.2
	FY06	322	249.0	132.7	97	527.2	336.6	225	123.6	97.1
	FY07	337	253.4	120.6	86	581.3	384.8	251	136.8	99.1
	FY08	405	259.6	135.9	110	569.5	361.8	295	136.1	101.8
	FY09	381	235.3	115.8	79	605.8	413.7	302	136.4	91.7
	FY10	346	245.8	141.4	71	598.6	374.4	275	152.0	113.4
	FY11	327	296.0	160.1	70	646.3	420.9	257	197.9	132.2
	FY12	322	297.9	169.0	42	947.3	666.1	280	193.8	156.9
	FY13	289	261.2	173.7	23	839.6	548.1	266	208.4	164.8
	FY14	260	301.6	173.7	34	849.0	514.6	226	217.2	154.5
	FY15 YTD (4/29/15)	159	267.8	155.0	19	736.8	434.4	140	199.2	141.2
	<b>All Years</b>	<b>2,826</b>	<b>266.8</b>	<b>149.2</b>	<b>534</b>	<b>655.5</b>	<b>411.4</b>	<b>2,292</b>	<b>172.1</b>	<b>121.7</b>

\* Dismissals & Abated include voluntary dismissal, abated, not competent to proceed, not guilty by reason of insanity, and dismissal with leave case dispositions. Data disposed through 4/29/2015

*Changes in Forensic Technologies and Errors in Forensic Analysis*

One factor driving the increase in attorney hours per case has been the need for attorneys to stay abreast of recent developments in forensic technologies. Enhanced forensic technologies, such as innovations in DNA testing, have significantly increased the prosecutorial demand for lab testing, which in turn has required defense counsel to learn new areas of science and to enlist the expertise of DNA and other experts to perform forensic examination of case evidence. The expansion in forensic investigation and staff turnover has caused backlogs at the North Carolina State Crime Lab (NCSCCL), triggering court continuances and court delays of a year or more. Moreover, the exposure of serious errors in forensic testing procedures and reporting has, in turn, required defense counsel to scrutinize forensic evidence more carefully and to challenge problematic procedures.

A review of the use of forensic experts in potentially capital cases disposed from FY02 to FY15 YTD shows an increased use of forensic experts. In FY02, fewer than 1 in 20 potentially capital cases required a forensic expert. By FY15, just under 1 in 5 potentially capital cases required one or more forensic experts. A detailed list of forensic expert types is included in the methodology section of the report.

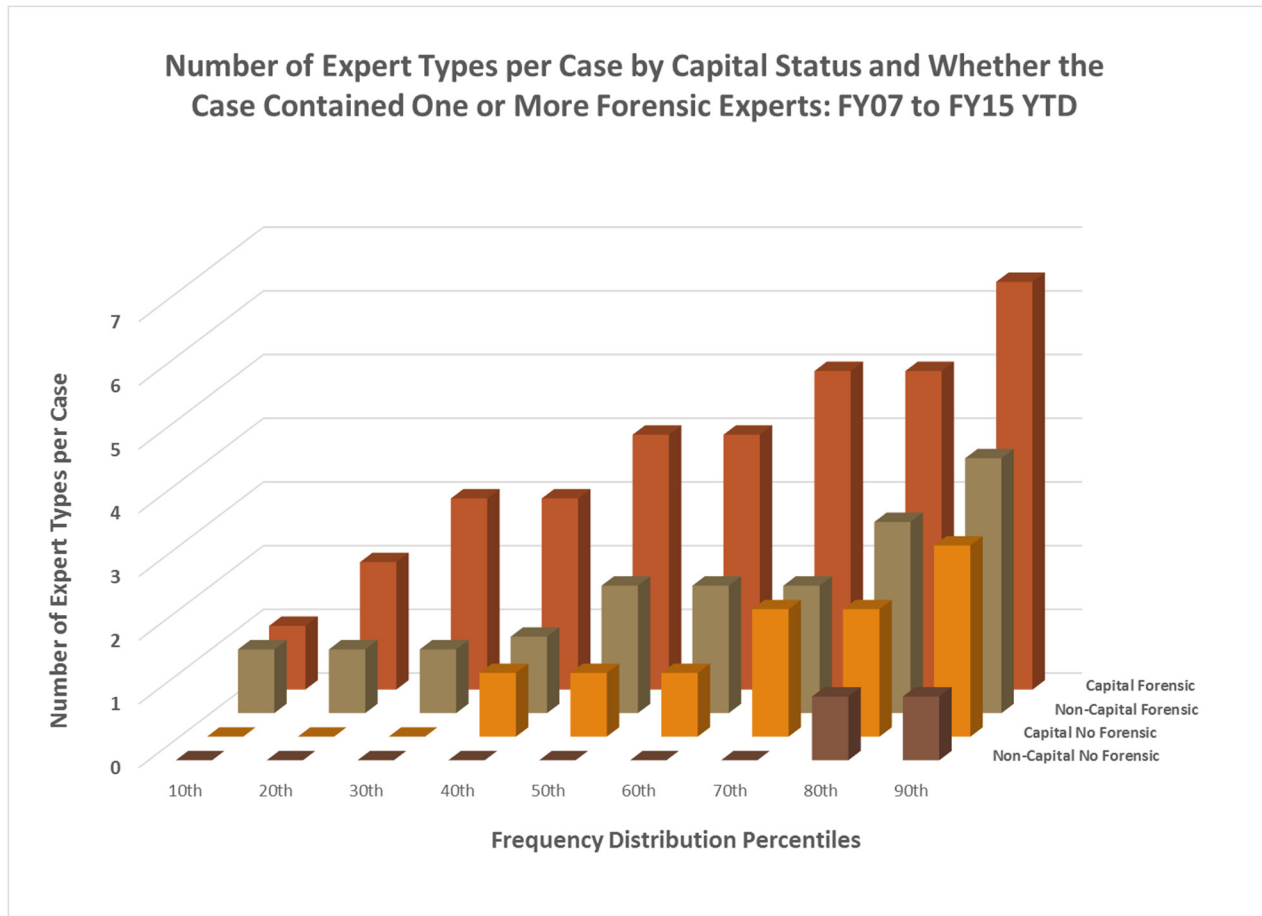


The increase in the role of various forensic sciences in potentially capital cases has changed the work required of defense counsel in many cases. A case that involves the analysis of evidence through the application of forensic science is often more complicated than a similar case without forensic analysis. Counsel must review complicated lab reports, understand the basis and significance of the results of the analysis, and work with defense experts to assess the validity of the results reached by a crime lab. The additional time that counsel must spend when one or more forensic sciences are at play includes the time spent with one or more experts ensuring that they have all of the relevant information and understanding the experts' independent analysis of the evidence, as well as time spent by counsel reviewing the lab's work, determining the significance of that work in the context of the overall case, and preparing both to confront the prosecution's forensic evidence and to present defense forensic evidence.

The increased complexity of cases requiring a forensic expert can be seen by looking at the number of unique expert types per case. On average, cases that require a forensic expert have at least three times the number of expert types per case, regardless of capital status. The charts to the right and on the following page show the frequency distribution of the number of expert types per case by capital status and whether a forensic expert was required.

Frequency Distribution of the Number of Experts per Case Whether One or More Forensic Experts Were Required: Cases Disposed FY07-FY15 YTD				
	Proceeded Capital		Proceeded Non-Capital	
No. Experts per Case	No Forensic Expert in Case	Forensic Expert in Case	No Forensic Expert in Case	Forensic Expert in Case
No. Cases	345	95	1,999	212
Average	1.2	3.9	0.3	2.1
Median	1.0	4.0	0.0	2.0
Percentiles				
10	0.0	1.0	0.0	1.0
20	0.0	2.0	0.0	1.0
30	0.0	3.0	0.0	1.0
40	1.0	3.0	0.0	1.2
50	1.0	4.0	0.0	2.0
60	1.0	4.0	0.0	2.0
70	2.0	5.0	0.0	2.0
80	2.0	5.0	1.0	3.0
90	3.0	6.4	1.0	4.0





A regression analysis looking at the impact of the use of forensic experts on attorney hours per case found that, 95% of the time, the need for a forensic expert will add between 139 to 197 hours of additional attorney time. In other words, in addition to the cost of the expert(s), somewhere between \$10,425 to \$18,745 of the cost of a case will be due to the attorney’s need for a forensic expert, depending on the capital status. A comparison of frequency distributions of attorney hours per case for potentially capital cases with and without at least one forensic expert disposed between FY07 and FY15 YTD shows the impact on attorney hours per case when cases involve forensic evidence. The most frequently used types of forensic experts were pathologist (31%), DNA expert (17%), ballistics or firearms expert (11%), and crime scene expert (11%).

<b>Frequency Distribution of Attorney Hours Paid in Potentially Capital Cases by Whether One or More Forensic Experts Were Required: Cases Disposed FY07 to FY15 YTD</b>					
<b>Attorney Hours Paid: Cases Without Forensic Experts</b>			<b>Attorney Hours Paid: Cases With at Least One Forensic Expert</b>		
No. Cases	2,240		No. Cases	289	
Average	187.8		Average	627.9	
Median	119.2		Median	350.4	
Percentiles	10	29	Percentiles	10	109
	20	51		20	155
	30	70		30	209
	40	92		40	267
	50	119		50	350
	60	155		60	431
	70	200		70	555
	80	274		80	771
	90	407		90	1,561

The tables below show the frequency distributions of attorney hours per case for proceeded capital and proceeded non-capital cases disposed between FY07 and FY15 YTD with and without at least one forensic expert. They show that the need for a forensic expert impacts both proceeded capital and proceeded non-capital cases.

<b>Frequency Distribution of Attorney Hours Paid in Proceeded Capital Cases by Whether One or More Forensic Experts Were Required: Cases Disposed FY07 to FY15 YTD</b>					
<b>Attorney Hours Paid Cases Without Forensic Experts</b>			<b>Attorney Hours Paid Cases With at Least One Forensic Expert</b>		
No. Cases		319	No. Cases		86
Average		453.8	Average		1,364.9
Median		340.2	Median		841.2
Percentiles	10	82	Percentiles	10	228
	20	129		20	420
	30	190		30	537
	40	273		40	713
	50	340		50	841
	60	418		60	1,169
	70	525		70	1,649
	80	694		80	2,089
	90	976		90	3,567
<b>Frequency Distribution of Attorney Hours Paid in Proceeded Non-Capital Cases by Whether One or More Forensic Experts Were Required: Cases Disposed FY07 to FY15 YTD</b>					
<b>Attorney Hours Paid Cases Without Forensic Experts</b>			<b>Attorney Hours Paid Cases With at Least One Forensic Expert</b>		
No. Cases		1,921	No. Cases		203
Average		143.6	Average		315.7
Median		104.9	Median		258.0
Percentiles	10	26	Percentiles	10	93
	20	46		20	138
	30	63		30	180
	40	84		40	209
	50	105		50	258
	60	133		60	320
	70	170		70	369
	80	222		80	468
	90	310		90	594

*Shift to Digital Evidence*

Another factor that is likely driving the increase in attorney hours per case has been the shift to digital media and the corresponding increased availability of video, audio, and DVD recordings, including multiple iterations of many of the recordings. While digital evidence has many benefits, it has also led to increased attorney time to review the increased volume in material to fully investigate the facts of a case. The Office of the Capital Defender will begin collecting data on the volume of digital evidence in potentially capital cases so IDS can begin to quantify the impact of that evidence on case costs, as well as evaluate strategies and practices IDS can develop to reduce these costs.

*Cases Are Taking Longer to Dispose*

Both proceeded capital and proceeded non-capital cases are taking longer to dispose. The table below presents trend data on the average number of months taken to dispose of proceeded capital and proceeded non-capital cases by the type of attorney that handled the case. By FY14, potentially capital cases were taking between 3 to 9 months longer to dispose than they were in FY07, depending on the capital status and type of attorney handling the case.

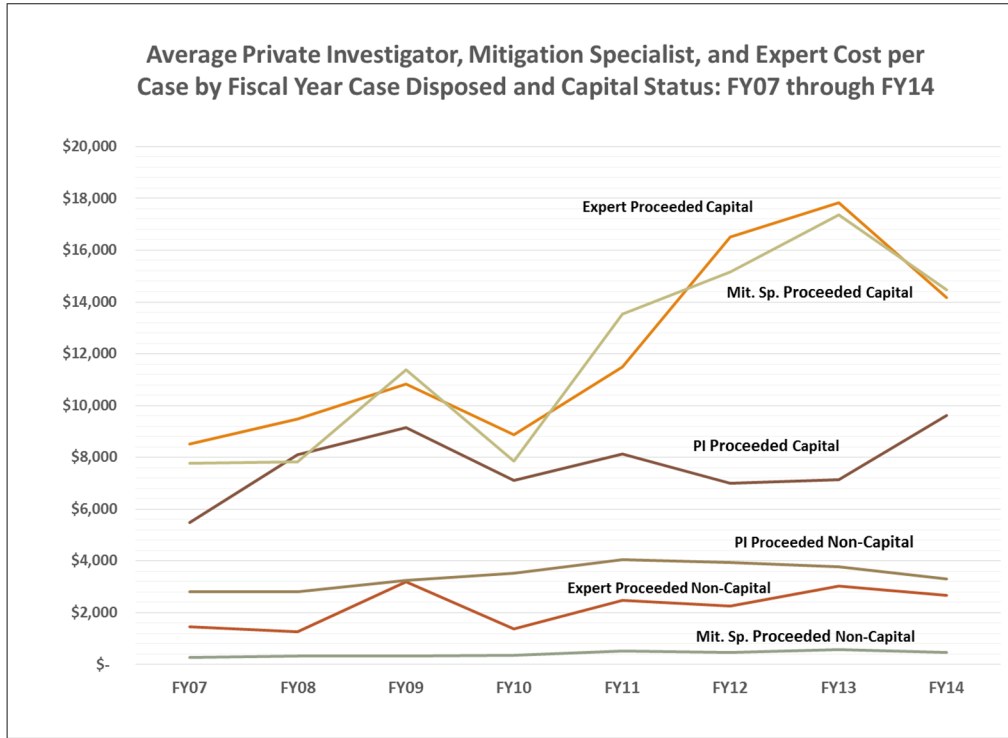
Case Length of Potentially Capital Cases by Capital Status, Attorney Type, and Year Case Disposed											
(Data through 4/29/15)											
Capital Status and Attorney Type	FY07	FY08	FY09	FY10	FY11	FY12	FY13	FY14	FY15 YTD	Graphical Representation of Trend Data	% Change Between FY07 and FY14
<b>Proceeded Capital</b>											
Case Handled by Only Private Appointed Counsel	29.00	30.58	30.89	33.19	34.12	36.16	35.85	39.94	39.80		37.7%
Case Handled by at Least 1 Public or Capital Defender	29.89	29.52	33.94	34.13	42.21	41.59	41.73	39.46	34.14		32.1%
<b>Proceeded Non-Capital</b>											
Case Handled by Only Private Appointed Counsel	18.24	19.96	20.48	22.08	23.35	25.92	26.80	26.48	25.04		45.2%
Case Handled by at Least 1 Public or Capital Defender	20.24	19.44	19.12	27.11	22.01	23.47	20.75	23.18	21.57		14.5%

A regression analysis looking at the impact of case length on attorney hours per case found that, 95% of the time, for every 1 month increase in the case length we can predict that between .8 to 2 hours of additional attorney time will be needed. In other words, between \$75 to \$190 will be added to the cost of a case for each month the case is pending, depending on the capital status and type of attorney handling the case. If NCSCL backlogs cause a delay of one year in a case, the backlog could add between \$900 to \$2,280 to the cost of a case.

The study also investigated whether the use of a forensic expert(s) in a case impacted case length, but found the data results to be inconclusive. While a regression analysis found that the use of a forensic expert did add, on average, 6 months to the length of a case, the regression model explained less than 10% of the variation in case length. This means the study did not have access to data on the key factors that determine case length. Consequently, the study cannot determine conclusively the true impact of the use of forensic expert(s) on case length.

**Private Investigator, Mitigation Specialist, and Expert Costs per Case Have Increased**

Adding to increases in average costs per case are increased private investigator, mitigation specialist, and expert costs per case. The chart below presents trend data on those combined average costs per case from FY07 to FY14.



The table below presents the changes in average per case private investigator, mitigation specialist, and expert costs between FY07 and FY14. And finally, the tables on pages 24 to 26 provide detailed trend data on those costs per case by capital status, year case was disposed, and type of disposition.

Change in Private Investigator, Mitigation Specialist, and Expert Cost per Case: FY07 and FY14									
Capital Status	Private Investigator			Mitigation Specialist			Expert		
	FY07	FY14	% Change	FY07	FY14	% Change	FY07	FY14	% Change
Proceeded Capital	\$ 5,488	\$ 9,608	75.1%	\$ 7,765	\$ 14,476	86.4%	\$ 8,501	\$ 14,170	66.7%
Proceeded Non-Capital	\$ 2,795	\$ 3,298	18.0%	\$ 274	\$ 476	73.7%	\$ 1,450	\$ 2,658	83.4%
All Potentially Capital Cases	\$ 3,482	\$ 4,123	18.4%	\$ 2,186	\$ 2,306	5.5%	\$ 3,277	\$ 4,163	27.0%

It should be noted that since the hourly rates of investigators, mitigation specialists, and attorney support services are lower than appointed counsel rates, the use of investigators, mitigation specialists, and attorney support services is a more cost-effective use of resources.

One of the factors driving the increase in private investigator and expert hours per case was the increase in forensic work discussed above. A regression analysis looking at the impact of the use of forensic experts on private investigator hours found that, 95% of the time, the need for a forensic expert will add between 50 to

71 hours of additional private investigator time. In other words, cases that involve forensic experts will also add somewhere between \$2,500 to \$3,550 of private investigator time to the cost of a case.

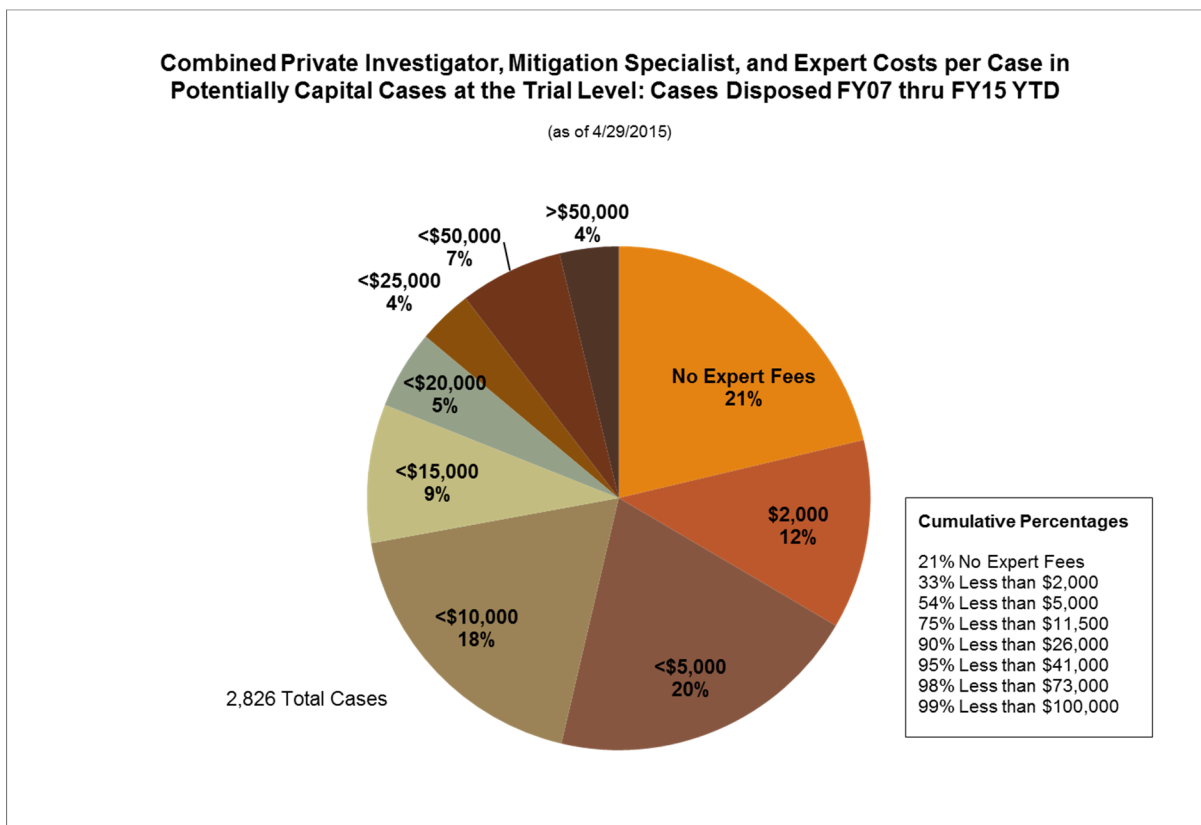
*Frequency of Investigator, Mitigation Specialist, and Experts in Potentially Capital Cases*

While the expert costs per case rose between FY07 and FY15, a significant number of potentially capital cases have no private investigators, mitigation specialists, or experts at all.

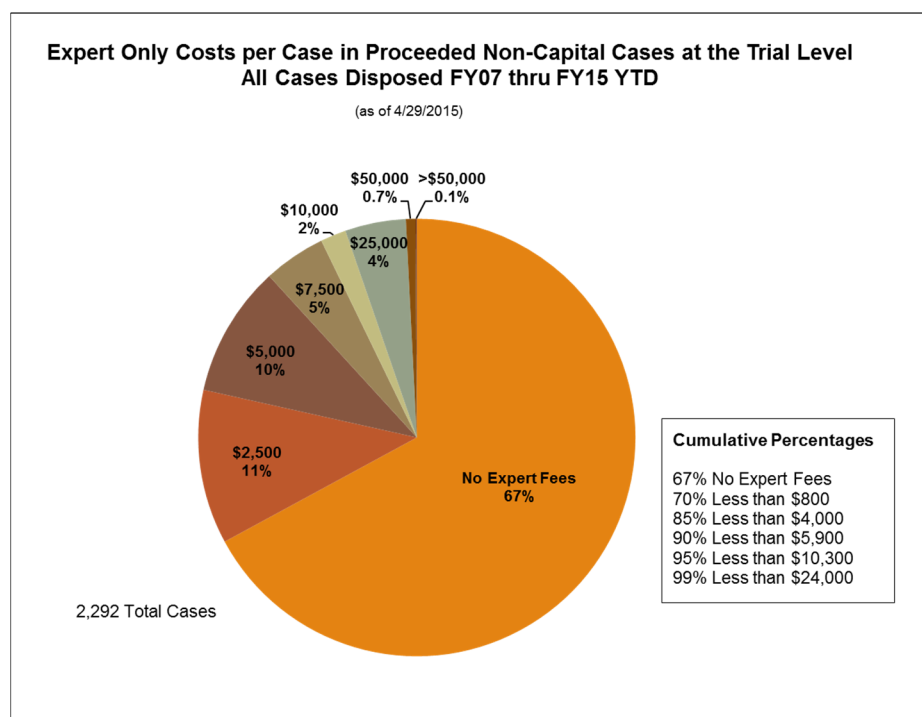
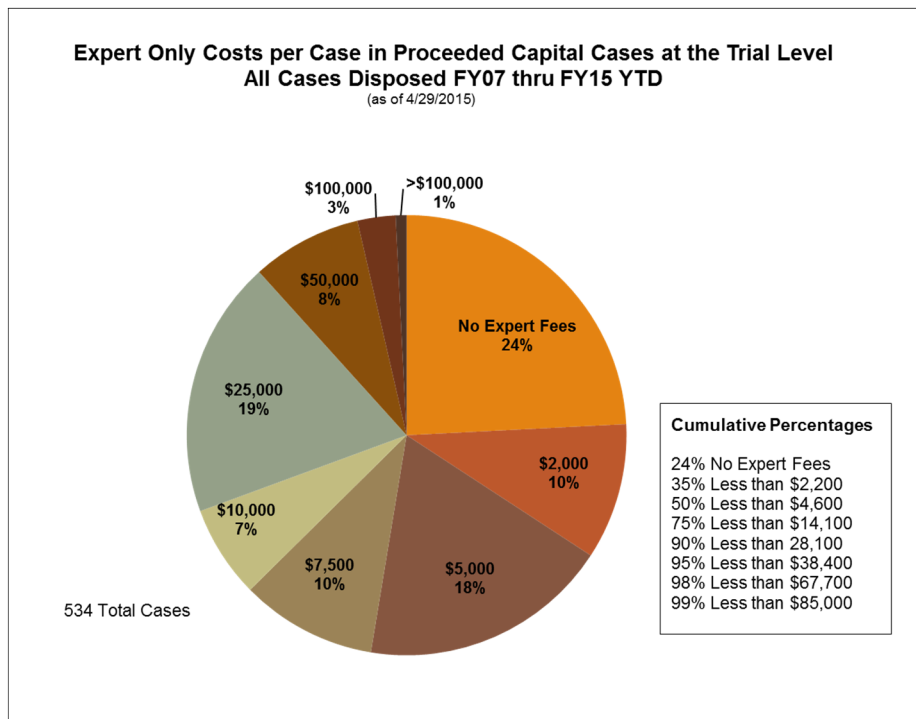
- 21.3% had no private investigator, mitigation specialist, or experts
- 32.4% had no private investigator
- 76.4 % had no mitigation specialist
- 58.9% had no expert

*High Private Investigator, Mitigation Specialist, and Expert Costs Remain the Exception*

Although the average private investigator, mitigation specialist, and expert costs per case have risen between FY07 and FY15, the majority of cases still have relatively low expert costs. The pie chart below presents a frequency distribution of the combined cost of private investigator, mitigation specialist, and expert costs per case for all potentially capital cases disposed between FY07 and FY15.



The DA’s decision whether to seek the death penalty remains the driving factor underlying the use of experts in potentially capital cases. The pie charts below show the breakdown of expert costs per case in proceeded non-capital cases and proceeded capital cases. Proceeded non-capital cases have no expert costs 67% of the time, compared to just 24% in proceeded capital cases.



\* By comparison, between 1998 and 2004, the average cost of experts in federal death-eligible cases was \$128,129 for proceeded capital cases and \$14,330 for proceeded non-capital cases.

The report notes that expert costs in federal death-eligible cases have risen substantially since 1997 and states that the trend “reflects, among other developments, the requirements for effective defense representation set forth by the U.S. Supreme Court in recent years in cases such as *Wiggins v. Smith*, 539 U.S. 510 (2003).”

Source: June, 2008. United States Judicial Conference Committee on Defender Services, *Update on the Cost, Quality, and Availability of Defense Representation in Federal Death Penalty Cases: Preliminary Report on Phase One of the Research.*

Potentially Capital Trial Private Investigator Case Costs										
by Fiscal Year Disposed and Capital Status: FY07 to FY15 YTD (as of 4/29/15)										
		All Potentially Capital			Proceeded Capital			Proceeded Non-Capital		
		No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost
Resentencing	FY07	2	\$0	\$0	2	\$0	\$0			
	FY08	1	\$0	\$0	1	\$0	\$0			
	FY09									
	FY10									
	FY11	2	\$7,016	\$7,016	1	\$14,032	\$14,032	1	\$0	\$0
	FY12									
	FY13									
	FY14									
	FY15 YTD									
	All Years	5	\$2,806	\$0	4	\$3,508	\$0	1	\$0	\$0
Trials	FY07	42	\$6,034	\$4,279	15	\$10,495	\$6,610	27	\$3,556	\$3,003
	FY08	73	\$7,951	\$3,000	25	\$14,798	\$6,500	48	\$4,386	\$2,148
	FY09	60	\$7,509	\$4,874	12	\$15,083	\$14,228	48	\$5,616	\$4,321
	FY10	62	\$7,289	\$6,754	16	\$8,301	\$8,595	46	\$6,937	\$5,586
	FY11	58	\$8,929	\$7,141	14	\$12,773	\$9,560	44	\$7,706	\$6,999
	FY12	53	\$7,354	\$6,443	14	\$10,698	\$9,108	39	\$6,154	\$5,400
	FY13	42	\$7,849	\$7,074	4	\$12,693	\$9,712	38	\$7,339	\$6,737
	FY14	40	\$8,503	\$5,712	5	\$31,663	\$40,230	35	\$5,195	\$5,063
	FY15 YTD	23	\$7,669	\$5,594	4	\$21,307	\$18,318	19	\$4,798	\$4,497
		All Years	453	\$7,704	\$5,703	109	\$13,432	\$8,990	344	\$5,890
Pleas	FY07	249	\$3,309	\$1,966	66	\$4,702	\$2,421	183	\$2,807	\$1,821
	FY08	274	\$3,459	\$1,786	77	\$5,745	\$4,260	197	\$2,566	\$1,499
	FY09	248	\$4,161	\$2,297	62	\$8,650	\$4,727	186	\$2,665	\$1,825
	FY10	234	\$3,882	\$2,281	45	\$6,882	\$3,500	189	\$3,168	\$2,172
	FY11	228	\$4,258	\$2,877	54	\$6,854	\$5,206	174	\$3,452	\$2,505
	FY12	221	\$3,838	\$2,928	27	\$5,235	\$3,330	194	\$3,644	\$2,684
	FY13	210	\$3,654	\$2,500	18	\$5,759	\$5,830	192	\$3,457	\$2,470
	FY14	203	\$3,295	\$2,100	28	\$5,612	\$6,215	175	\$2,924	\$2,028
	FY15 YTD	116	\$3,276	\$2,227	13	\$4,788	\$3,800	103	\$3,085	\$2,078
		All Years	1,983	\$3,705	\$2,374	390	\$6,239	\$4,074	1,593	\$3,085
Dismissals & Abated	FY07	44	\$2,636	\$924	3			41	\$2,723	\$888
	FY08	56	\$7,641	\$5,500	6	\$24,874	\$24,446	50	\$5,129	\$4,742
	FY09	72	\$3,115	\$1,638	5			67	\$3,280	\$1,925
	FY10	50	\$3,310	\$1,475	10	\$6,978	\$3,562	40	\$2,682	\$1,480
	FY11	38	\$7,157	\$8,266	1			37	\$6,116	\$5,143
	FY12	47	\$7,483	\$3,878	1			46	\$7,484	\$3,753
	FY13	36	\$5,248	\$814	1			35	\$4,230	\$644
	FY14	17	\$6,986	\$6,500	1			16	\$6,416	\$6,169
	FY15 YTD	20	\$7,198	\$6,190	2			18	\$7,375	\$6,524
		All Years	380	\$5,903	\$2,569	30	\$13,586	\$9,535	350	\$5,061
Unknown (incl Other)	FY07									
	FY08	1	\$455	\$455	1	\$455	\$455			
	FY09	1	\$12,000	\$12,000				1	\$12,000	\$12,000
	FY10									
	FY11	1	\$0	\$0				1	\$0	\$0
	FY12	1	\$0	\$0				1	\$0	\$0
	FY13	1	\$1,360	\$1,360				1	\$1,360	\$1,360
	FY14									
	FY15 YTD									
	All Years	5	\$2,763	\$455	1	\$455	\$455	4	\$3,340	\$680
All Cases	FY07	337	\$3,482	\$1,886	86	\$5,488	\$3,024	251	\$2,795	\$1,513
	FY08	405	\$4,240	\$2,063	110	\$8,089	\$5,362	295	\$2,804	\$1,536
	FY09	381	\$4,479	\$2,448	79	\$9,145	\$4,571	302	\$3,258	\$2,045
	FY10	346	\$4,265	\$2,417	71	\$7,117	\$4,148	275	\$3,529	\$2,179
	FY11	327	\$4,923	\$3,218	70	\$8,136	\$5,979	257	\$4,048	\$2,700
	FY12	322	\$4,346	\$3,036	42	\$7,010	\$4,885	280	\$3,947	\$2,739
	FY13	289	\$4,038	\$2,632	23	\$7,145	\$6,011	266	\$3,770	\$2,492
	FY14	260	\$4,123	\$2,500	34	\$9,608	\$6,651	226	\$3,298	\$2,202
	FY15 YTD	159	\$3,923	\$2,500	19	\$7,961	\$4,564	140	\$3,375	\$2,411
		All Years	2,826	\$4,227	\$2,500	534	\$7,670	\$4,873	2,292	\$3,425

\* Dismissals & Abated include voluntary dismissal, abated, not competent to proceed, not guilty by reason of insanity, and dismissal with leave case dispositions.

Potentially Capital Trial Mitigator Case Costs											
by Fiscal Year Disposed and Capital Status: FY07 to FY15 YTD (as of 4/29/15)											
		All Potentially Capital			Proceeded Capital			Proceeded Non-Capital			
		No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	
Resentencing	FY07	2	\$22,550	\$22,550	2	\$22,550	\$22,550				
	FY08	1	\$0	\$0	1	\$0	\$0				
	FY09										
	FY10										
	FY11	2	\$10,653	\$10,653	1	\$21,305	\$21,305	1	\$0	\$0	
	FY12										
	FY13										
	FY14										
	FY15 YTD										
	All Years	5	\$13,281	\$0	4	\$16,601	\$10,653	1	\$0	\$0	
Trials	FY07	42	\$4,772	\$0	15	\$12,663	\$11,017	27	\$389	\$0	
	FY08	73	\$3,440	\$0	25	\$9,853	\$7,000	48	\$99	\$0	
	FY09	60	\$3,692	\$0	12	\$17,896	\$16,610	48	\$141	\$0	
	FY10	62	\$3,165	\$0	16	\$10,717	\$4,903	46	\$538	\$0	
	FY11	58	\$6,122	\$0	14	\$23,356	\$12,973	44	\$638	\$0	
	FY12	53	\$5,213	\$0	14	\$17,960	\$12,250	39	\$637	\$0	
	FY13	42	\$3,352	\$0	4	\$27,437	\$33,667	38	\$817	\$0	
	FY14	40	\$4,486	\$0	5	\$33,124	\$33,250	35	\$395	\$0	
		FY15 YTD	23	\$6,800	\$0	4	\$36,966	\$38,160	19	\$450	\$0
	All Years	453	\$4,365	\$0	109	\$16,735	\$12,750	344	\$445	\$0	
Pleas	FY07	249	\$1,932	\$0	66	\$6,533	\$3,413	183	\$272	\$0	
	FY08	274	\$2,313	\$0	77	\$7,322	\$5,152	197	\$355	\$0	
	FY09	248	\$3,060	\$0	62	\$10,980	\$6,556	186	\$420	\$0	
	FY10	234	\$1,824	\$0	45	\$7,888	\$5,468	189	\$380	\$0	
	FY11	228	\$3,021	\$0	54	\$10,884	\$8,494	174	\$581	\$0	
	FY12	221	\$2,123	\$0	27	\$14,025	\$12,032	194	\$467	\$0	
	FY13	210	\$1,714	\$0	18	\$13,848	\$8,867	192	\$577	\$0	
	FY14	203	\$1,905	\$0	28	\$11,310	\$10,000	175	\$401	\$0	
		FY15 YTD	116	\$2,506	\$0	13	\$13,620	\$13,500	103	\$1,103	\$0
	All Years	1,983	\$2,267	\$0	390	\$9,590	\$6,640	1,593	\$474	\$0	
Dismissals & Abated	FY07	44	\$257	\$0	3	.	.	41	\$236	\$0	
	FY08	56	\$5,137	\$0	6	\$23,162	\$21,775	50	\$1,408	\$0	
	FY09	72	\$881	\$0	5	.	.	67	\$841	\$0	
	FY10	50	\$666	\$0	10	\$3,477	\$834	40	\$0	\$0	
	FY11	38	\$3,715	\$0	1	.	.	37	\$100	\$0	
	FY12	47	\$2,652	\$0	1	.	.	46	\$2,494	\$0	
	FY13	36	\$6,226	\$0	1	.	.	35	\$445	\$0	
	FY14	17	\$8,551	\$2,500	1	.	.	16	\$7,845	\$2,500	
		FY15 YTD	20	\$450	\$0	2	.	.	18	\$163	\$0
	All Years	380	\$3,621	\$0	30	\$21,219	\$12,343	350	\$1,480	\$0	
Unknown	FY07										
	FY08	1	\$0	\$0	1	\$0	\$0				
	FY09	1	\$0	\$0				1	\$0	\$0	
	FY10										
	FY11	1	\$0	\$0				1	\$0	\$0	
	FY12	1	\$0	\$0				1	\$0	\$0	
	FY13	1	\$0	\$0				1	\$0	\$0	
		FY14									
	FY15 YTD										
	All Years	5	\$0	\$0	1	\$0	\$0	4	\$0	\$0	
All Cases	FY07	337	\$2,186	\$0	86	\$7,765	\$4,120	251	\$274	\$0	
	FY08	405	\$2,359	\$0	110	\$7,833	\$5,269	295	\$317	\$0	
	FY09	381	\$2,610	\$0	79	\$11,378	\$6,672	302	\$316	\$0	
	FY10	346	\$1,891	\$0	71	\$7,855	\$4,919	275	\$351	\$0	
	FY11	327	\$3,301	\$0	70	\$13,526	\$10,579	257	\$516	\$0	
	FY12	322	\$2,382	\$0	42	\$15,157	\$11,891	280	\$466	\$0	
	FY13	289	\$1,917	\$0	23	\$17,368	\$11,843	266	\$581	\$0	
	FY14	260	\$2,306	\$0	34	\$14,476	\$10,093	226	\$476	\$0	
		FY15 YTD	159	\$2,863	\$0	19	\$17,390	\$15,000	140	\$891	\$0
		All Years	2,826	\$2,405	\$0	534	\$10,846	\$6,998	2,292	\$438	\$0

\* Dismissals & Abated include voluntary dismissal, abated, not competent to proceed, not guilty by reason of insanity, and dismissal with leave case dispositions.



Potentially Capital Trial Case Experts Only Case Cost with by Fiscal Year Disposed and Capital Status: FY07 to FY15 YTD (as of 4/29/2015)										
Type of Disposition	FY Disposed	All Potentially Capital			Proceeded Capital			Proceeded Non-Capital		
		No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost	No. Cases	Avg. Cost	Median Cost
Resentencing	FY07	2	\$25,571	\$25,571	2	\$25,571	\$25,571			
	FY08	1	\$0	\$0	1	\$0	\$0			
	FY09									
	FY10									
	FY11	2	\$13,118	\$13,118	1	\$26,235	\$26,235	1	\$0	\$0
	FY12									
	FY13									
	FY14									
	FY15 YTD									
All Years		5	\$15,475	\$0	4	\$19,344	\$13,118	1	\$0	\$0
Trials	FY07	42	\$8,556	\$3,706	15	\$17,395	\$10,168	27	\$3,645	\$0
	FY08	73	\$9,180	\$2,000	25	\$22,360	\$6,860	48	\$2,315	\$0
	FY09	60	\$7,039	\$650	12	\$25,597	\$23,241	48	\$2,400	\$0
	FY10	62	\$4,461	\$2,517	16	\$9,403	\$4,491	46	\$2,742	\$1,724
	FY11	58	\$11,042	\$5,234	14	\$25,027	\$12,997	44	\$6,592	\$4,246
	FY12	53	\$12,486	\$3,500	14	\$30,902	\$23,175	39	\$5,875	\$1,980
	FY13	42	\$13,383	\$3,201	4	\$49,228	\$53,986	38	\$9,610	\$3,068
	FY14	40	\$11,442	\$1,498	5	\$57,525	\$21,928	35	\$4,859	\$0
	FY15 YTD	23	\$7,951	\$4,085	4	\$24,540	\$28,552	19	\$4,459	\$750
	All Years		453	\$9,345	\$2,831	109	\$24,250	\$14,957	344	\$4,622
Pleas	FY07	249	\$2,582	\$0	66	\$6,221	\$2,495	183	\$1,248	\$0
	FY08	274	\$2,371	\$0	77	\$5,628	\$2,400	197	\$1,052	\$0
	FY09	248	\$2,846	\$0	62	\$8,748	\$5,000	186	\$878	\$0
	FY10	234	\$2,426	\$0	45	\$7,550	\$3,750	189	\$1,186	\$0
	FY11	228	\$3,177	\$0	54	\$7,429	\$3,534	174	\$1,842	\$0
	FY12	221	\$2,701	\$0	27	\$9,671	\$4,900	194	\$1,700	\$0
	FY13	210	\$2,581	\$0	18	\$9,663	\$5,853	192	\$1,906	\$0
	FY14	203	\$2,895	\$0	28	\$6,934	\$4,713	175	\$2,249	\$0
	FY15 YTD	116	\$2,515	\$0	13	\$7,767	\$4,890	103	\$1,852	\$0
	All Years		1,983	\$2,678	\$0	390	\$7,323	\$3,573	1,593	\$1,524
Dismissals & Abated	FY07	44	\$3,280	\$2,500	3			41	\$3,314	\$2,500
	FY08	56	\$7,820	\$600	6	\$22,305	\$19,878	50	\$4,926	\$500
	FY09	72	\$7,763	\$4,172	5			67	\$7,784	\$4,172
	FY10	50	\$5,344	\$900	10	\$16,394	\$900	40	\$2,832	\$2,400
	FY11	38	\$18,246	\$17,962	1			37	\$10,327	\$10,043
	FY12	47	\$5,751	\$2,531	1			46	\$5,778	\$2,531
	FY13	36	\$8,379	\$1,373	1			35	\$3,162	\$687
	FY14	17	\$10,678	\$6,128	1			16	\$10,713	\$6,128
	FY15 YTD	20	\$1,614	\$0	2			18	\$1,815	\$0
	All Years		380	\$7,672	\$1,192	30	\$27,354	\$25,881	350	\$5,301
Unknown (incl Other)	FY07									
	FY08	1	\$0	\$0	1	\$0	\$0			
	FY09	1	\$0	\$0				1	\$0	\$0
	FY10									
	FY11	1						1		
	FY12	1	\$0	\$0				1	\$0	\$0
	FY13	1	\$30,084	\$30,084				1	\$30,084	\$30,084
	FY15 YTD									
All Years		5	\$7,521	\$0	1	\$0	\$0	4	\$10,028	\$0
All Cases	FY07	337	\$3,277	\$0	86	\$8,501	\$3,500	251	\$1,450	\$0
	FY08	405	\$3,543	\$0	110	\$9,484	\$3,064	295	\$1,258	\$0
	FY09	381	\$3,205	\$0	79	\$10,821	\$5,400	302	\$1,212	\$0
	FY10	346	\$2,926	\$0	71	\$8,881	\$3,500	275	\$1,360	\$0
	FY11	327	\$4,442	\$0	70	\$11,481	\$5,045	257	\$2,486	\$0
	FY12	322	\$4,171	\$0	42	\$16,518	\$7,886	280	\$2,265	\$0
	FY13	289	\$4,239	\$0	23	\$17,833	\$7,725	266	\$3,027	\$0
	FY14	260	\$4,163	\$0	34	\$14,170	\$6,219	226	\$2,658	\$0
	FY15 YTD	159	\$3,168	\$0	19	\$10,480	\$4,890	140	\$2,175	\$0
	All Years		2,826	\$3,672	\$0	534	\$10,957	\$4,576	2,292	\$1,946

## 6. Impact of Attorney Withdrawals on Potentially Capital Case Costs

This study also investigated whether the presence of one or more attorney withdrawals from a case added significantly to potentially capital case costs. A regression analysis of cases with at least one attorney withdrawal<sup>4</sup> and subsequent attorney appointment found that, 95% of the time, between 7.5 to 64 hours of additional attorney time will occur. In other words, attorney withdrawals will add somewhere between \$563 to \$5,440 to the cost of a case depending on the capital status. A comparison of the average cost per case of cases without an attorney withdrawal to cases that had at least one attorney withdrawal found the following:

	Avg. Per Case Cost No Withdrawals	Avg. Per Case Cost At Least 1 Withdrawal
All Potentially Capital Cases	\$31,920	\$56,101
Proceeded Capital at Some Point	\$88,163	\$121,164
Proceeded Non-Capital	\$19,537	\$33,778

Moreover, there is some evidence that the percentage of cases that have an attorney withdrawal may have increased between FY07 and FY15. The table below presents trend data on the number and percentage of potentially capital cases disposed by PAC, public defenders, and capital defenders between FY07 and FY15 YTD that had at least one attorney withdrawal.

The Percentage of Potentially Capital Trial Cases with at Least One Attorney Withdrawal													
FY Disposed	All Potentially Capital Cases				Proceeded Capital				Proceeded Non-Capital				
	Case Has Withdrawal		All Cases		Case Has Withdrawal		All Cases		Case Has Withdrawal		All Cases		
	No. Cases	% of FY	No. Cases	% of FY	No. Cases	% of FY	No. Cases	% of FY	No. Cases	% of FY	No. Cases	% of FY	
FY07	58	12.0%	482	100.0%	27	22.1%	122	100.0%	26	7.9%	329	100.0%	
FY08	69	12.4%	557	100.0%	28	19.0%	147	100.0%	33	8.7%	380	100.0%	
FY09	70	13.1%	533	100.0%	15	14.4%	104	100.0%	50	12.8%	391	100.0%	
FY10	79	16.0%	495	100.0%	30	30.6%	98	100.0%	47	12.7%	370	100.0%	
FY11	74	15.8%	469	100.0%	23	23.2%	99	100.0%	43	12.6%	341	100.0%	
FY12	68	14.9%	457	100.0%	15	25.0%	60	100.0%	41	11.3%	364	100.0%	
FY13	71	16.1%	440	100.0%	9	20.5%	44	100.0%	53	14.8%	358	100.0%	
FY14	91	21.2%	430	100.0%	14	23.3%	60	100.0%	74	22.2%	333	100.0%	
FY15 YTD	74	21.2%	349	100.0%	12	31.6%	38	100.0%	57	20.7%	275	100.0%	
All Years	654	15.5%	4,212	100.0%	173	22.4%	772	100.0%	424	13.5%	3141	100.0%	

Note: Includes all disposed cases regardless of attorney type.

Cases have an attorney withdrawal when:

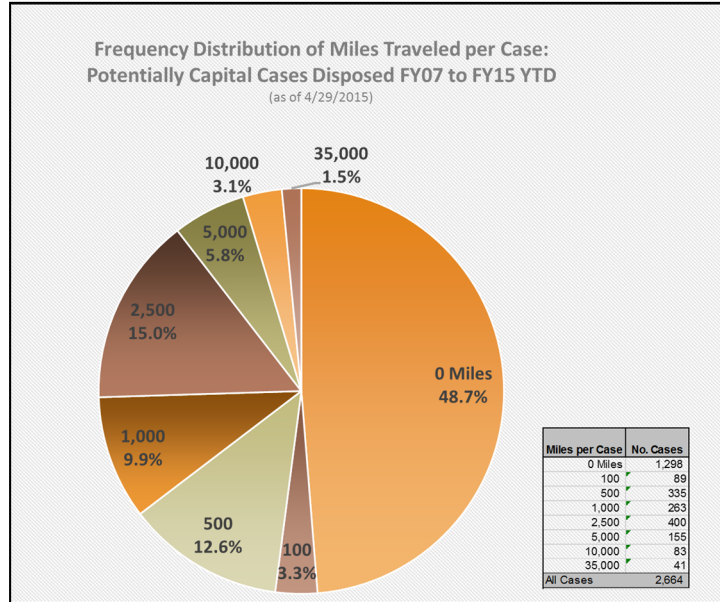
- 1) the withdrawal is by an attorney (excludes withdrawals by private investigators, mitigation specialists, or experts)
- 2) the attorney withdrawal occurred after at least 31 days (31 or fewer days was assumed to have no impact)
- 3) the withdrawing attorney was replaced.

To the extent that IDS can reduce the occurrence of withdrawals or develop improved mechanisms to assist in the transfer of case material from one attorney to another attorney, IDS could help reduce capital case costs.

<sup>4</sup> To adjust for the occurrence of attorneys who are appointed immediately discovering a conflict and then withdrawing before any significant time investment, attorney withdrawals that occurred within 31 days of appointment were not considered to be a "withdrawal" for this analysis.

### 7. Impact of Attorney Travel on Potentially Capital Case Costs

The study investigated the cost impact of attorney travel in potentially capital cases and found that, while the impact is relatively small per mile, the cumulative impact on case costs can be significant. A regression analysis of the impact of miles traveled per case, as measured by miles reimbursed per case, on attorney hours found that, 95% of the time, for every 1 mile traveled .11 hours of additional attorney time will occur. In other words, attorney travel will add between \$8.25 to \$9.35 to the cost of a case for each mile traveled, depending on the capital status. Cumulatively, this impact can add significant costs to a case. For every 100 miles of travel, IDS can expect to pay up to approximately \$935 (@ \$85/hourly rate) in additional attorney fees and \$35 in mileage expenses. The pie chart to the right shows the frequency distribution of miles traveled per case. While almost half (or 48.7%) of cases have 0 miles traveled, between FY07 and FY15 YTD, just slightly more than one-fourth (or 25.5%) have at least 1,000 miles of attorney travel adding to case costs.



### 8. IDS Capital Costs Are Driven by DA Decisions

The two primary factors that drive IDS’ expenditures in potentially capital cases at the trial level are whether the DA decides to prosecute the case as capital or non-capital and the practice in North Carolina of charging most alleged intentional homicides as first degree or undesignated murder, even though more than 83% of these cases are eventually disposed as second degree or less.

First, the DA’s decision whether to seek the death penalty is the paramount factor driving capital case costs, regardless of whether the case ends in a trial, plea, or dismissal. Cases in which the defendant faced the death penalty cost at least 4 times more than cases in which the defendant faced life without parole. Between FY07 and FY15 YTD, the average cost of a proceeded capital case was \$93,231 compared to \$21,022 for a proceeded non-capital case. And, although the percentage of proceeded capital cases has dropped significantly over the last 9 years, which has kept capital trial expenditures for both the state and the defense significantly lower than they would have been, 83.6% of all potentially capital cases and 58.1% of proceeded capital cases are still eventually disposed as second degree murder or less.

***Proceeded capital cases cost at least 4 times more than proceeded non-capital cases.***

Second, North Carolina has a tradition of charging most alleged intentional homicides as first degree or undesignated murder, rather than second degree murder or voluntary manslaughter. Treating most intentional homicides as if they were first degree murder, or failing to designate the murder charge, has been one of the primary factors driving the cost of indigent defense expenditures in potentially capital cases. Between FY07 and FY15, the average cost of a potentially capital case was \$34,666, compared to an average cost of \$2,338 for a second degree murder case (a B2 felony) or \$1,023 for a voluntary manslaughter case (a D felony).

Despite the fact that prosecutors have reduced the frequency at which they seek the death penalty, current potentially capital case dispositions indicate court actors still need to work together to reduce capital expenditures.

Dispositions in Potentially Capital Cases at the Trial Level				
Dispositions	FY02 to FY06		FY07 to FY15	
	% All Cases 2nd Degree or Less	2,143	88.3%	3,208
% All Cases Less than 2nd Degree	1,225	47.6%	1,754	45.7%
% All Cases Dismissed, No True Bill, No Probable Cause	321	12.5%	449	11.7%
% All Cases Acquitted, Dismissed, No True Bill, No Probable Cause	396	15.4%	514	13.4%
% Proceeded Capital Cases 2nd Degree or Less	429	59.1%	439	58.1%
% Proceeded Capital Cases Less than 2nd Degree	158	21.8%	152	20.1%
% Proceeded Capital Dismissed, No True Bill, No Probable Cause	26	3.6%	35	4.6%
% Proceeded Capital Acquitted, Dismissed, No True Bill, No Probable Cause	49	6.7%	48	6.4%

The table on the following page presents potentially capital case dispositions by capital status and type of disposition for all potentially capital cases disposed between FY07 and FY15 YTD.

In terms of cost, the difference between charging and prosecuting a case as first degree or undesignated degree of murder and charging a case as second degree murder or voluntary manslaughter is significant. A proceeded non-capital case costs \$21,022 compared to class B1/B2 or D felonies, which cost \$2,738 and \$1,271 respectively.

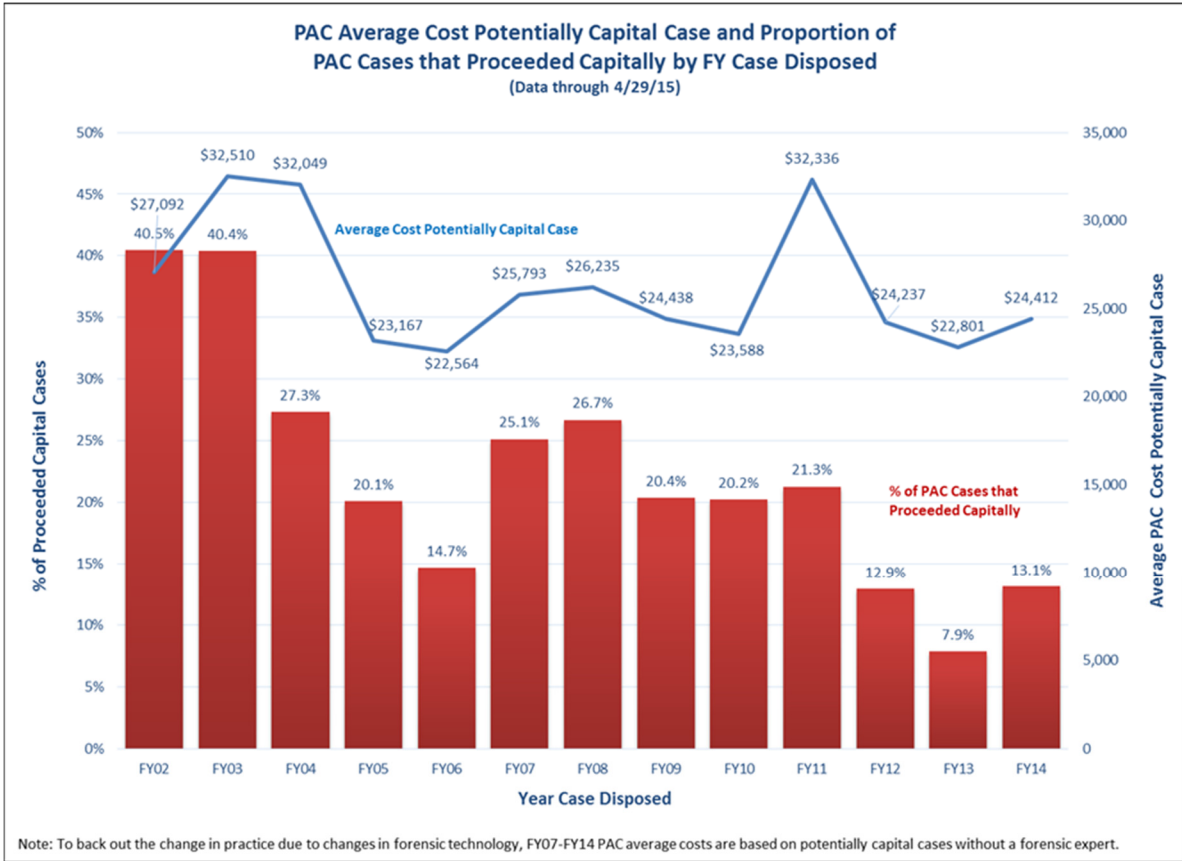
While this study did not update the table below, between FY02 and FY07, 86% to 88% of intentional homicides were charged as first degree or undesignated murder. However, between FY07 and FY15, more than 83% of first degree or undesignated murder cases are disposed as second degree or less. Treating most intentional homicides as if they were first degree murder, or failing to designate the murder charge, has been one of the primary factors driving up the cost of indigent defense expenditures in potentially capital cases. When the degree of murder is not designated in the charge, the case proceeds as a potentially capital case because the prosecutor retains authority to seek a death sentence. When a case proceeds potentially capitally, defense counsel are paid at the higher rate of \$85 per hour (compared to \$75 per hour in cases where a death sentence is not a possible outcome). In addition, defense attorneys are constitutionally obligated to obtain the assistance of a mitigation specialist and explore evidence of any mitigating factors that may be present. *See Rompilla v. Beard*, 545 U.S. 374 (2005); *Wiggins v. Smith*, 539 U.S. 510 (2003). The table below shows a breakdown of how intentional homicide cases were charged between FY02 and FY07.

North Carolina Intentional Homicide Charges						
(as reported in ACIS*)						
	FY02	FY03	FY04	FY05	FY06	FY07
Voluntary Manslaughter	24	17	22	24	23	22
Second Degree Murder	86	84	88	109	98	89
First Degree Murder	361	381	391	412	414	406
Murder (Undesignated)	344	363	334	387	378	353
Total Murder Charges	815	845	835	932	913	870
% Vol. Manslaughter	2.9%	2.0%	2.6%	2.6%	2.5%	2.5%
% Second Degree Murder	10.6%	9.9%	10.5%	11.7%	10.7%	10.2%
% First Degree Murder	44.3%	45.1%	46.8%	44.2%	45.3%	46.7%
% Murder (Undesignated) -- Proceeds as if First Degree	42.2%	43.0%	40.0%	41.5%	41.4%	40.6%
% First Degree & Murder (Potentially Capital Cases)	86.5%	88.0%	86.8%	85.7%	86.7%	87.2%

Source: AOC Research and Planning Division, North Carolina ACIS Data, September 2008.

\*Per AOC, the charge in ACIS typically reflects the charge in the arrest warrant and generally is not updated should the defendant subsequently be indicted on a different charge.

The graph below shows how the cost of a potentially capital case is driven by the rate at which prosecutors decide to seek the death penalty. The bars on the graph show the percentage of all potentially capital cases that proceeded capitally, while the graph line shows the average cost of a potentially capital case. In order to isolate the impact of seeking the death penalty on potentially capital case costs and exclude the impact of forensic evidence on case costs, the study analyzed potentially capital cases without a forensic expert. As the graph shows, the average cost of a potentially capital case decreases significantly when prosecutors seek the death penalty less often.



**9. Dispositions in Potentially Capital Cases at the Trial Level Indicate that IDS, the DAs, and Other Court Actors Could Work Together to Reduce Spending**

Between FY07 and FY15 YTD, over 83% of all potentially capital cases at the trial level have ended in a conviction of second degree murder or less and just under 12% have ended in a voluntary dismissal, no true bill, or no probable cause finding.<sup>5</sup> Moreover, more than 45% of potentially capital cases ended in a conviction of *less* than second degree murder. For proceeded capital cases, almost 60% ended in a conviction of second degree murder or less and 20% ended in a conviction of *less* than second degree murder.

<sup>5</sup> Excludes voluntary dismissal with leave, abated, not competent to proceed, not guilty by reason of insanity, and resentencing hearings dispositions.

Potentially Capital Cases at the Trial Level by Disposition and Costs per Case (FY07 Disposed through 4/29/15)											
Disposition	All Disposed Cases	Pct. of Disposed Cases	Disposed Cases with All Fees Known	Mean Cost per Case	Median Cost per Case	Disposition	All Disposed Cases	Pct. of Disposed Cases	Disposed Cases with All Fees Known	Mean Cost per Case	Median Cost per Case
<b>Proceeded Capital</b>											
Resentenced - Life	7	0.8%	4	\$ 102,932	\$ 84,542	Resentenced - Life	8	0.2%	5	\$ 82,888	\$ 2,711
Trial - Death	17	2.2%	10	\$ 271,961	\$ 241,140	Trial - Death	17	0.4%	10	\$ 271,961	\$ 241,140
Trial - Life	112	14.5%	69	\$ 184,325	\$ 115,906	Trial - Life	366	9.4%	261	\$ 84,094	\$ 45,713
Trial - Guilty, 2nd Degree Murder	17	2.2%	9	\$ 121,906	\$ 93,863	Trial - Guilty, 2nd Degree Murder	89	2.3%	59	\$ 44,808	\$ 29,850
Trial - Guilty, Voluntary Manslaughter	3	0.4%	1	\$ 16,904	\$ 16,904	Trial - Guilty, Voluntary Manslaughter	39	1.0%	27	\$ 31,137	\$ 25,278
Trial - Guilty, Other Felony	1	0.1%	-	-	-	Trial - Guilty, Other Felony	12	0.3%	10	\$ 26,052	\$ 21,391
Trial - Not Guilty	13	1.7%	12	\$ 149,860	\$ 132,490	Trial - Not Guilty	65	1.7%	49	\$ 71,672	\$ 39,610
Mistrial	10	1.3%	8	\$ 194,260	\$ 158,922	Mistrial	43	1.1%	37	\$ 81,818	\$ 53,887
Plea - Death	1	0.1%	1	\$ 206,345	\$ 206,345	Plea - Death	1	0.0%	1	\$ 206,345	\$ 206,345
Plea - Life	186	24.1%	119	\$ 83,488	\$ 69,820	Plea - Life	246	6.3%	158	\$ 68,901	\$ 50,401
Plea - 2nd Degree Murder	270	35.0%	198	\$ 65,785	\$ 48,338	Plea - 2nd Degree Murder	1,365	34.9%	952	\$ 29,826	\$ 19,013
Plea - Accessory After	23	3.0%	18	\$ 40,565	\$ 33,613	Plea - Accessory After	106	2.7%	86	\$ 21,020	\$ 16,223
Plea - Conspiracy Commit Murder	4	0.5%	4	\$ 65,680	\$ 53,577	Plea - Conspiracy Commit Murder	11	0.3%	8	\$ 45,870	\$ 36,086
Plea - Voluntary Manslaughter	25	3.2%	20	\$ 62,517	\$ 46,798	Plea - Voluntary Manslaughter	447	11.4%	329	\$ 20,675	\$ 15,159
Plea - Involuntary Manslaughter	4	0.5%	3	\$ 46,866	\$ 44,358	Plea - Involuntary Manslaughter	159	4.1%	114	\$ 15,275	\$ 9,653
Plea - Other Felony	33	4.3%	27	\$ 56,412	\$ 54,339	Plea - Other Felony	417	10.7%	334	\$ 17,650	\$ 12,318
No True Bill Found	1	0.1%	1	-	-	Plea - Misdemeanor or Other Non-Felony	1	0.0%	1	\$ 12,972	\$ 12,972
Voluntary Dismissal	34	4.4%	24	\$ 49,130	\$ 19,566	No Probable Cause Found	15	0.4%	14	\$ 7,584	\$ 4,064
Not Competent to Proceed	4	0.5%	1	\$ 129,558	\$ 129,558	No True Bill Found	8	0.2%	8	\$ 1,384	\$ 920
Not Guilty by Reason of Insanity	2	0.3%	2	\$ 140,412	\$ 140,412	Voluntary Dismissal	426	10.9%	314	\$ 15,496	\$ 8,848
Abated	4	0.5%	2	\$ 51,605	\$ 51,605	Voluntary Dismissal with Leave	6	0.2%	1	\$ 9,187	\$ 9,187
Other	1	0.1%	1	\$ 12,453	\$ 12,453	Not Competent to Proceed	20	0.5%	11	\$ 37,068	\$ 29,482
<b>All Capital</b>	<b>772</b>	<b>100.0%</b>	<b>534</b>	<b>\$ 93,231</b>	<b>\$ 60,286</b>	Not Guilty by Reason of Insanity	8	0.2%	7	\$ 62,812	\$ 54,540
<b>Proceeded Non-Capital</b>											
Resentenced - Life	1	0.0%	1	\$ 2,711	\$ 2,711	Abated	33	0.8%	25	\$ 21,896	\$ 8,612
Trial - Life	254	8.1%	192	\$ 44,480	\$ 35,295	Other	5	0.1%	5	\$ 20,032	\$ 12,453
Trial - Guilty, 2nd Degree Murder	72	2.3%	50	\$ 30,930	\$ 26,428	<b>Total</b>	<b>3,913</b>	<b>100.0%</b>	<b>2,826</b>	<b>\$ 34,666</b>	<b>\$ 18,346</b>
Trial - Guilty, Voluntary Manslaughter	36	1.1%	26	\$ 31,684	\$ 25,443	% All Cases 2nd Degree or Less	3,208	3.838	83.6%		
Trial - Not Guilty	11	0.4%	10	\$ 26,052	\$ 21,391	% All Cases Less than 2nd Degree	1,754	3.838	45.7%		
Mistrial	33	1.1%	29	\$ 50,800	\$ 41,997	% All Cases Dismissed, No True Bill, No Probable Cause	449	3.838	11.7%		
Plea - Life	60	1.9%	39	\$ 24,394	\$ 19,241	% All Cases Acquired, Dismissed, No True Bill, No Probable Cause	514	3.838	13.4%		
Plea - 2nd Degree Murder	1,095	34.9%	754	\$ 20,383	\$ 15,451	% Proceeded Capital Cases 2nd Degree or Less	439	7.55	58.1%		
Plea - Accessory After	83	2.6%	68	\$ 15,847	\$ 12,646	% Proceeded Capital Cases Less than 2nd Degree	152	7.55	20.1%		
Plea - Conspiracy Commit Murder	7	0.2%	4	\$ 26,059	\$ 21,430	% Proceeded Capital Dismissed, No True Bill, No Probable Cause	35	7.55	4.6%		
Plea - Voluntary Manslaughter	422	13.4%	309	\$ 17,967	\$ 13,784	% Proceeded Capital Acquired, Dismissed, No True Bill, No Probable Cause	48	7.55	6.4%		
Plea - Involuntary Manslaughter	155	4.9%	111	\$ 14,421	\$ 9,492	Note:					
Plea - Other Felony	384	12.2%	307	\$ 14,240	\$ 11,744	The total number of cases and percentages immediately above exclude Abated, Not Competent to Proceed, Not Guilty by Reason of Insanity, Resentencing - Death, Resentencing - Life, and Voluntary Dismissal with Leave dispositions.					
Plea - Misdemeanor or Other Non-Felony	1	0.0%	1	\$ 12,972	\$ 12,972						
No Probable Cause Found	15	0.5%	14	\$ 7,584	\$ 4,064						
No True Bill Found	7	0.2%	7	\$ 1,582	\$ 1,080						
Voluntary Dismissal	392	12.5%	290	\$ 12,713	\$ 7,874						
Voluntary Dismissal with Leave	6	0.2%	1	\$ 9,187	\$ 9,187						
Not Competent to Proceed	16	0.5%	10	\$ 27,819	\$ 29,421						
Not Guilty by Reason of Insanity	6	0.2%	5	\$ 31,772	\$ 16,982						
Abated	29	0.9%	23	\$ 19,313	\$ 7,116						
Other	4	0.1%	4	\$ 21,927	\$ 22,412						
<b>All Non-Capital</b>	<b>3,141</b>	<b>100.0%</b>	<b>2,282</b>	<b>\$ 21,022</b>	<b>\$ 14,920</b>						

## 10. Transcriptionists

The study researched the use of transcriptionists in potentially capital cases. Between FY11 and FY15, only 1.6% (or 45 cases) included transcription services. The number of transcription hours ranged from 1 hour to 400 hours. The study investigated whether the use of transcriptionist services reduced attorney hours per case but found no evidence that it did so.

Transcription Services in Potentially Capital Cases by Year Case Disposed (Data through 4/29/15)							
FY Disposed	All Potentially Capital Cases	Case Has Transcription Services					
		No. Cases with Transcriptionist	Pct. Cases with Transcriptionist	Average Transcriptionist Hours	Median Transcriptionist Hours	Minimum Transcriptionist Hours	Maximum Transcriptionist Hours
FY11	327	3	0.9%	50.5	12.5	6.5	132.5
FY12	322	7	2.2%	58.7	26.0	1.0	174.6
FY13	289	11	3.8%	66.8	26.0	7.5	400.0
FY14	260	19	7.3%	49.8	31.0	2.0	244.4
FY15 YTD	159	5	3.1%	37.0	30.0	12.0	61.5
Total	1,357	45	3.3%	54.0	29.0	1.0	400.0

Treating most intentional homicides as if they were first degree murder, or failing to designate the murder charge, has been one of the primary factors driving up the cost of indigent defense expenditures in potentially capital cases. When the degree of murder is not designated in the charge, the case proceeds as a potentially capital case because the prosecutor retains authority to seek a death sentence. When a case proceeds potentially capitally, defense counsel are paid at the higher rate of \$85 per hour (compared to \$75 per hour in cases where a death sentence is not a possible outcome). In addition, defense attorneys are constitutionally obligated to obtain the assistance of a mitigation specialist and explore evidence of any mitigating factors that may be present. *See Rompilla v. Beard*, 545 U.S. 374 (2005); *Wiggins v. Smith*, 539 U.S. 510 (2003). The table on the next page shows a breakdown of how intentional homicide cases were charged between FY02 and FY07.

## Methodology

This study analyzed expenditures for potentially capital cases at the trial level handled by PAC disposed between FY07 and FY15 as of April 29, 2015. All cost data on potentially capital cases, including proceeded capital and non-capital cases, are based on cases where only PAC handled the cases and all fees had been submitted on the case.

Forensic experts include: Ballistics/Firearms, DNA, Pathologist, Forensics, Fingerprint, Hair/Fiber, Crime Scene Expert, Blood Spatter, Arson Investigator, Statistician, Psychometrician, Computers, Telecommunications, Accident Reconstruction, Entomologist, Other Trace, Audio/Video, Breathalyzer/BAC, Drug Analysis, Serology, Bite Marks/Forensic Dental, Footwear/Footprint, Tool Marks, and Tire Mark.

## Limitations

Inevitably, there is a time lag between events and when data can be collected and analyzed. The study used the most recent data available, which included all potentially capital cases that had been disposed and for which all final fee applications from PAC and experts had been submitted, processed, and paid by April 29, 2015.