

N.C. Office of Indigent Defense Services

FY07 Capital Trial Case Study

PAC and Expert Spending in Potentially Capital Cases at the Trial Level

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Executive Summary

First degree murder and undesignated degree of murder cases are cases in which the defendant faces either the death penalty or life without parole. Cases where the 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. The study refers to all first degree and undesignated degree of murder cases at the trial level as “Potentially Capital” cases. North Carolina General Statute 7A-450(b1) mandates 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 attorney and expert fees and expenses. The study looked at dispositions for cases that opened after the revisions to G.S. 15A-2004, which gave prosecutors discretion to try first degree murder cases non-capitally even if there was evidence of an aggravating factor.

1. Capital Case Costs Are Not Rising

Although the average cost of a potentially capital case has fluctuated from year to year, case costs have not been rising. Instead, IDS total capital trial expenditures have grown over the years because the number of pending potentially capital trial cases has grown each year. On average, approximately 544 new potentially capital cases open each year, while just 479 cases close each year. This means the backlog of open cases for which IDS pays fees grows every year, causing expenditures to grow.

- Between FY02 and FY06, the average cost of a potentially capital case was \$27,834. During this time the average fluctuated between a low of \$22,564 (FY06) and a high of \$32,510 (FY03).
- The number of open cases IDS has made payments on has grown 49%, from 746 cases in FY02 to 1,112 cases in FY08.

2. The High Profile Expensive Potentially Capital Cases at the Trial Level are the Exception

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 low cost.

- 50% cost less than \$14,400
- 75% cost less than \$30,500
- 90% cost less than \$64,500
- 25% have no expert fees
- 60% have expert fees that total less than \$5,000

3. 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.

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 3 times more than cases in which the defendant faced life without parole.

- Between FY02 and FY06, the average cost of a proceeded capital case was \$58,592 compared to \$14,170 for a proceeded non-capital case.

If a defendant is accused of committing an intentional homicide, he or she could be charged with first degree murder, second degree murder, or voluntary manslaughter depending on the circumstances of the case. North Carolina has had a tradition of charging most alleged intentional homicides as first degree or undesignated murder, although more than 83% of these cases are eventually disposed as second degree or less.

- Between 2002 and 2007, 86% to 88% of intentional homicides were charged as either first degree or undesignated murder.

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 the authority to seek a death sentence.

- Between FY02 and FY06, the average cost of a potentially capital case was \$27,834, compared to an average cost of \$1,931 for a second degree murder case (a B2 felony class) or \$1,385 for a voluntary manslaughter case (a D felony class).

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

North Carolina is spending millions of extra 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 with warrant dates after July 1, 2001¹:

- Over 83% ended in a conviction of second degree murder or less.
- Over 12% ended in a voluntary dismissal, no true bill, or no probable cause finding.
- 45% ended in a conviction of *less* than second degree murder.

For proceeded capital cases²:

- 60% ended in a conviction of second degree murder or less.
- 22% ended in a conviction of *less* than second degree murder.
- 3% ended in a death verdict.

In terms of average case costs:

- A proceeded non-capital case costs \$14,170 compared to B2 or class D felonies, which cost \$1,931 and \$1,385 respectively.

This data should be very helpful in discussing with district attorneys and other court actors ways to reduce spending in potentially capital cases.

¹ Excludes Voluntary Dismissal with Leave, Abated, Not Competent to Proceed, and Not Guilty By Reason of Insanity dispositions.

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

FY07 Capital Trial Case Study

PAC and Expert Spending in Potentially Capital Cases at the Trial Level

Introduction

Annual expenditures on private appointed counsel and experts in potentially capital cases at the trial level have been rising over the last five years. In FY02, expenditures were \$10.7 million. By FY08, expenditures had risen to \$16.4 million. This study examined the question of whether average costs per case in potentially capital cases at the trial level have been growing, including spending on private counsel, expert witnesses, private investigators, and mitigation specialists.

This study looked at annual expenditures, per case costs, expert fee awards, and dispositions in potentially capital cases at the trial level to understand the factors that drive indigent defense spending in these cases.

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 2 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, investigators, and mitigation specialists in potentially capital cases at the trial level.
- *PD and CD Cases*: Cases with at least one Public Defender, Assistant Public Defender, Capital 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.
- *Pre-IDS Cases*: Cases that were opened before July 1, 2001, the day the IDS Rules took effect. Attorneys were appointed to these cases by the presiding judge, not the Office of the Capital Defender.
- *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. Capital Case Costs Are Not Rising

Although the average cost of a potentially capital case has fluctuated from year to year, case costs have not been rising. Instead, IDS total capital trial expenditures have grown over the years because the number of pending potentially capital trial cases has grown each year. On average, approximately 544 new potentially capital cases open each year, while just 479 cases close each year. This means the backlog of open cases for which IDS pays fees grows every year, causing expenditures to grow.

Increases in Spending on Potentially Capital Cases at the Trial Level are Due to an Increase in the Number of Cases, Not an Increase in per Case Costs

The table below presents trend data on the average cost of potentially capital trial cases by disposition and whether the DA proceeded capitally or non-capitally. Costs include all costs in a case, including all attorney and expert fees and expenses. As is shown by the trend data, while the average cost of a potentially capital case at the trial level may fluctuate somewhat from year to year, overall per case costs have not been rising. In FY02, the average cost of a potentially capital case at the trial level was \$27,092 compared to \$23,167 in FY05. Even when one looks at per case costs by disposition or whether the case proceeded capitally or non-capitally, the data shows that per case costs have not been rising.

While the average cost of a potentially capital case at the trial level may fluctuate from year to year, overall per case costs have not been rising.

Post IDS Average Expenditures per Potentially Capital Case at the Trial Level by FY Case Was Opened							
(Includes Cases with Outstanding Fees from All or Half the Attorneys, Cases with Late Penalty Fees, and Cases Missing Only a Small Percentage of Attorney's Fees. Excludes Cases Where There Is Still Time to Submit a Fee Application.)							
		Proceeded Capital			Proceeded Non-Capital		
Disposition	FYOpen	No. Cases	Average	Median	No. Cases	Average	Median
Trials	FY02**	37	89,136	70,906	32	18,024	16,745
	FY03	30	92,824	62,293	43	30,659	28,523
	FY04	29	124,073	96,806	35	20,288	16,399
	FY05	10	94,953	98,123	34	23,649	16,839
	All Years*	111	104,462	82,110	167	24,442	18,737
Pleas	FY02**	114	37,221	26,382	161	10,887	8,598
	FY03	116	48,215	38,147	151	13,668	9,978
	FY04	57	49,138	30,587	168	14,717	11,206
	FY05	43	47,374	41,131	142	14,581	11,503
	FY06	16	28,884	15,429	85	12,624	9,761
	All Years*	351	43,699	31,117	744	13,177	9,886
Dismissals	FY02**	2	10,253	10,253	34	6,720	2,780
	FY03	8	34,159	23,971	40	7,643	4,367
	FY04	2	163,713	163,713	28	13,551	7,621
	FY05	-	No Cases	-	35	9,233	5,644
	All Years*	12	51,767	18,878	169	8,679	4,484
All Disp.	FY02**	157	50,222	32,808	231	11,371	8,688
	FY03	160	57,235	41,422	236	15,747	10,486
	FY04	88	76,436	37,006	234	15,356	11,332
	FY05	54	55,964	44,145	215	14,930	11,296
	FY06	22	67,393	22,245	128	14,859	10,804
	All Years*	486	58,592	37,182	1,099	14,170	10,214
All Potentially Capital Cases							
All Cases	FY02**	388	27,092	13,145			
All Disp.	FY03	396	32,510	18,009			
	FY04	322	32,049	15,771			
	FY05	269	23,167	13,520			
	FY06	150	22,564	12,496			
	All Years*	1,586	27,834	14,151			
*All Years includes FY06 and FY07. Where FY06 and FY07 are absent, there are too few cases to provide a meaningful average. ** FY02 marks the establishment of a Capital Roster system for potentially capital cases to ensure defense attorneys have the experience and skill to represent individuals in capital cases. By FY03, the Capital Roster System was firmly in place and only approved attorneys on the capital rosters were being appointed to handle potentially capital cases. Expenditure and cost data includes cases closed in the IDS database as of 11/11/2007, and excludes the 495 additional closed cases found in April 2008 during a cross-check with ACIS of all reported open potentially capital trial cases.							

The growth in the number of potentially capital cases at the trial level and the relative stability in per case costs indicate that IDS capital trial expenditures have risen over the years, not because of increased spending per case, but because the number of pending potentially capital trial cases has grown. By FY08, IDS had 1,112 open potentially capital trial cases to pay for compared to just 746 open cases in FY02. The data shows no evidence that per case costs have been rising during this time period. For more detail on average potentially capital trial expenditures, see the extensive table *Post IDS Average Expenditures per Potentially Capital Case at the Trial Level* provided later in this report.

Potentially Capital Cases at the Trial Level are Resolved at a Slower Pace than the Influx of New Cases, Increasing the Number of Pending Capital Cases

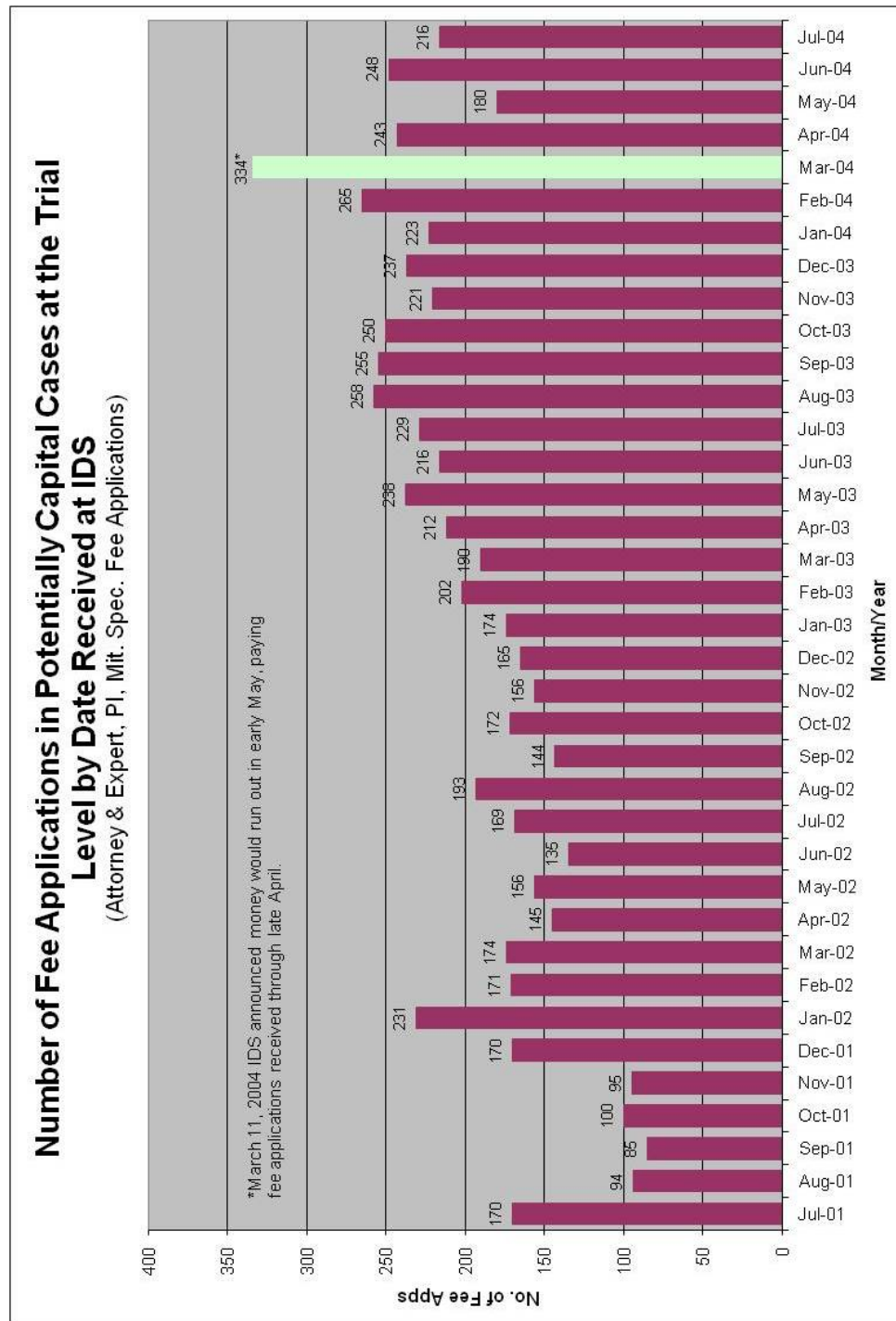
The table below shows the number of new potentially capital cases that have opened each fiscal year and the number that have closed. The table also shows the cumulative number of open cases on which IDS makes expenditures each fiscal year. On average, approximately 544 new potentially capital cases open each fiscal year, while just 479 cases close each fiscal year. The result is that the backlog of open cases for which IDS pays fees has grown each fiscal year, resulting in increases in total capital trial expenditures each year. In fact, the number of open cases IDS has made payments on has grown from 746 cases in FY02 to 1,112 cases in FY08, a 49% growth. For more detail on trends in potentially capital case openings and closings, see the table *Post IDS Potentially Capital Cases at the Trial Level by FY Disposed* on page 12.

The number of open cases IDS has made payments on has grown 49%, from 746 cases in FY02 to 1,112 cases in FY08.

Potentially Capital Cases at the Trial Level: Expenditures by Fiscal Year								
Fiscal Year	No. New Cases Open	No. Cases Closed	Cases Open Going Into Next FY	PAC & Expert FY Expenditures	Rough Cost per Trial	Expert Spending Only	Expert Spending as a % of Total Spending	Notes
Pre-IDS	894	239	655	N/A				
FY02	534	443	746	\$ 10,703,873	\$ 14,348	\$ 1,986,566	18.6%	
FY03	592	485	853	\$ 11,068,911	\$ 12,976	\$ 3,000,044	27.1%	
FY04	549	507	895	\$ 14,030,463	\$ 15,676	\$ 4,048,330	28.9%	March 11, 2004 IDS announced money would run out in early May and a 26% spike in capital fee applications occurs (see graph).
FY05	551	507	939	\$ 12,247,994	\$ 13,044	\$ 4,259,029	34.8%	
FY06	565	456	1,048	\$ 13,970,473	\$ 13,331	\$ 4,206,403	30.1%	
FY07	540	466	1,122	\$ 13,980,807	\$ 12,461	\$ 4,561,437	32.6%	Some fees paid at higher \$95 rate (11.8% increase). \$10 increase equaled \$602,318 in FY07.
FY08*	476	486	1,112	\$ 16,420,005	\$ 14,766	\$ 5,469,461	33.3%	Two-thirds of attorney fees paid at the higher \$95 rate. \$10 increase equaled \$1,093,548 in FY08.
FY Unknown	15	5						
Total	4,716	3,594	1,122					
Average (excluding Pre-IDS)	544	479						
% Change FY02 to FY08			49.1%					
* The attorney hourly rate was raised from \$85 to \$95 for capital work performed on or after 8/1/2006.								

Please note that part of the increase in potentially capital expenditures in FY07 and especially in FY08 was due to the change in the hourly rate paid to attorneys handling capital cases. The hourly rate for PAC handling potentially capital cases increased from \$85 to \$95 per hour, an 11.8% increase, for work performed on or after August 1, 2006. In FY07, the \$10 increase equaled \$602,318 and, in FY08, the increase equaled \$1,093,548. Also note that there was one anomaly in the trend data for potentially capital cases at the trial level in the table on the previous page. In FY04, IDS PAC expenditures on potentially capital trial cases rose from \$11.1 million to \$14 million, a larger increase than normal. The increase was due to an announcement IDS made in March 2004 that the indigent defense fund would run out of money

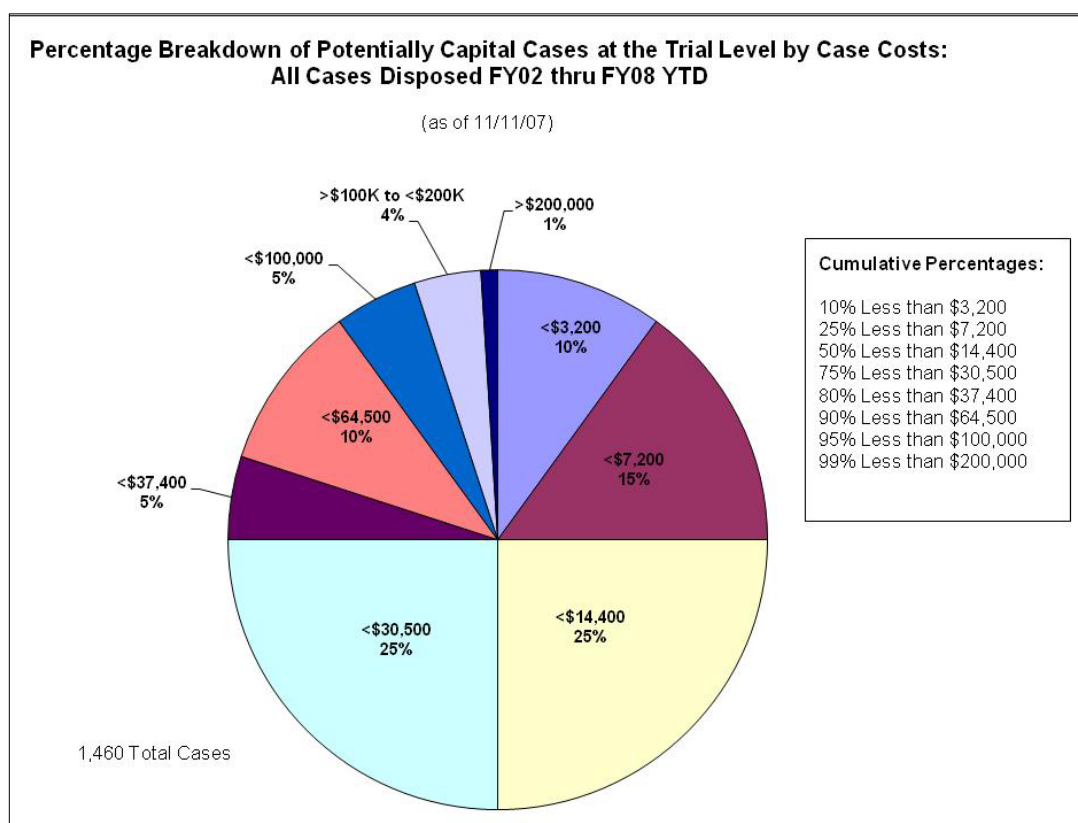
in early May 2004, which generated a large influx of fee applications from attorneys and experts hoping to get a fee application paid before the funds were depleted. The bar chart below shows the number of fee applications in potentially capital cases at the trial level that were submitted each month since July 2001. The spike in fee applications submitted in March 2004 is clearly visible. Moreover, the spike in fee application submissions is followed by a drop in fee application submissions in the following months. The influx of fee applications created a 26% spike in the number of capital trial fee applications, resulting in the FY04 spike in capital trial expenditures. In effect, the announcement caused approximately \$1 to \$1.5 million in fee applications for potentially capital cases at the trial level to be attributed to FY04, which normally would have been paid in FY05.



2. The High Profile Expensive Potentially Capital Cases at the Trial Level are the Exception

While the media and others tend to focus on the few rare cases that have a higher price tag, 75% of potentially capital cases at the trial level cost less than \$30,500, including attorneys and experts. If every cent was spent on attorney fees, that would represent less than 9 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 \$14,400, which, at most, is the equivalent of less than 4.3 weeks of an attorney's time. And 90% of all potentially capital cases cost less than \$64,500, which, at most, is 19 weeks of an attorney's time.¹

50% of all potentially capital cases at the trial level cost less than \$14,400.

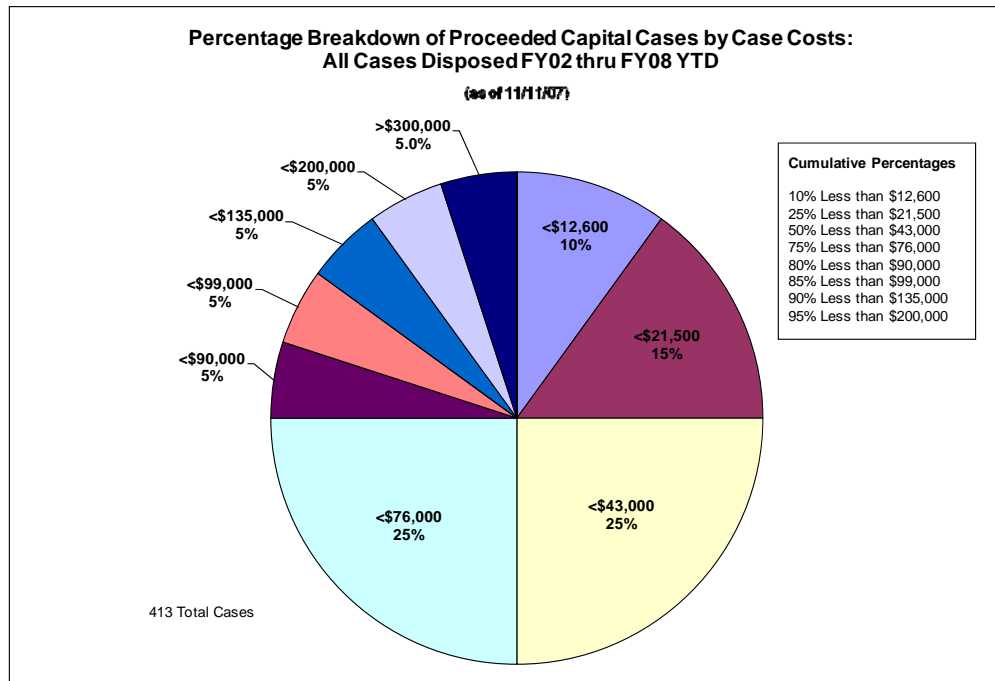


¹ By comparison, between 1998 and 2004, the average cost of defense representation in federal death-eligible cases was \$491,905 for proceeded capital cases and \$76,665 for proceeded non-capital cases. However, the Federal Administrative Office of the Courts pays defense attorneys working on death eligible cases \$125 per hour, which is 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:

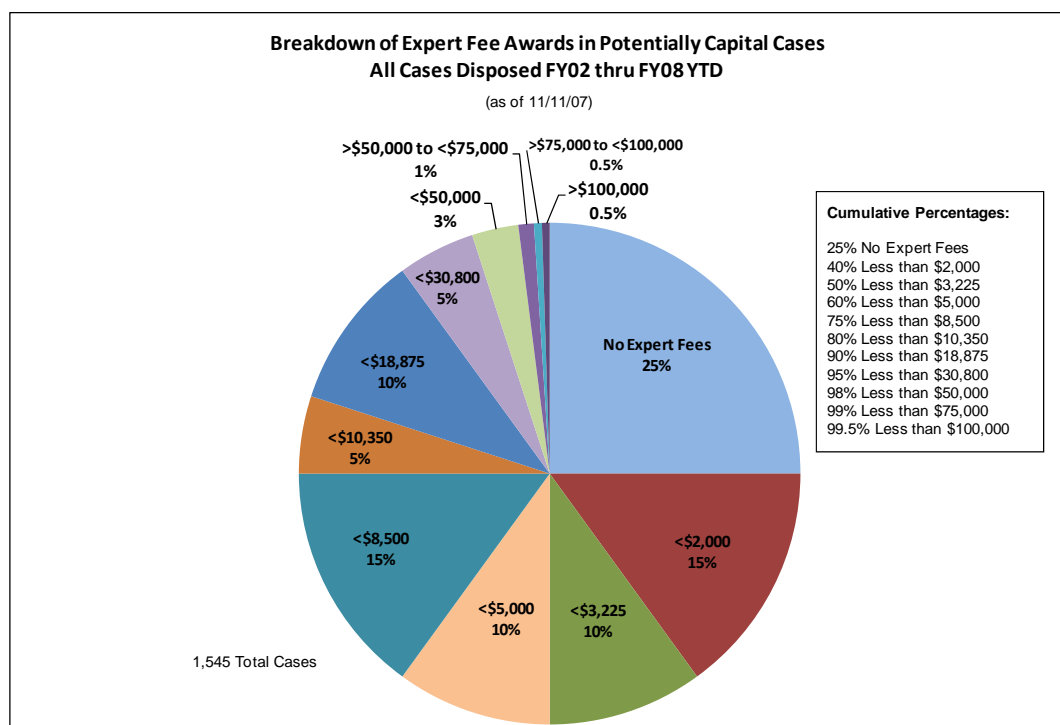
	Federal Average (Adj. \$85/hr)	North Carolina Average
Proceeded Capital	\$375,497	\$56,717
Proceeded Non-Capital	\$56,717	\$14,170

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*.

Even in proceeded capital trial cases, where the defendant was facing the death penalty, the majority of cases were relatively low-cost cases. As the pie chart below displays, 50% of all proceeded capital cases cost less than \$43,000, which, at most, is less than 12.7 weeks of one attorney's time. 75% of proceeded capital cases cost less than \$76,000, which, at most, is less than 22.5 weeks of one attorney's time. Although the handful of cases that have high price tags receive the most attention, in fact, there are very few of these cases.



The perception that high expert fees are routine in potentially capital cases at the trial level is also a misperception. In fact, 25% of all potentially capital cases at the trial level have no expert fees and 60% have expert fees that total less than \$5,000. Almost 65% of all indigent defense capital expert fees are



awarded to private investigators and mitigation specialists. Moreover, since both private investigator and mitigation specialist hourly rates are one- to two-thirds lower than the hourly rate of capital attorneys, it is more cost-effective to use these experts rather than attorneys to perform these investigative and support tasks.

Proceeded capital cases cost at least 3 times more than a proceeded non-capital case.

3. 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.

The DA's Decision Whether to Seek the Death Penalty is the Paramount Factor Driving Case Costs in Potential Capitally Cases at the Trial Level

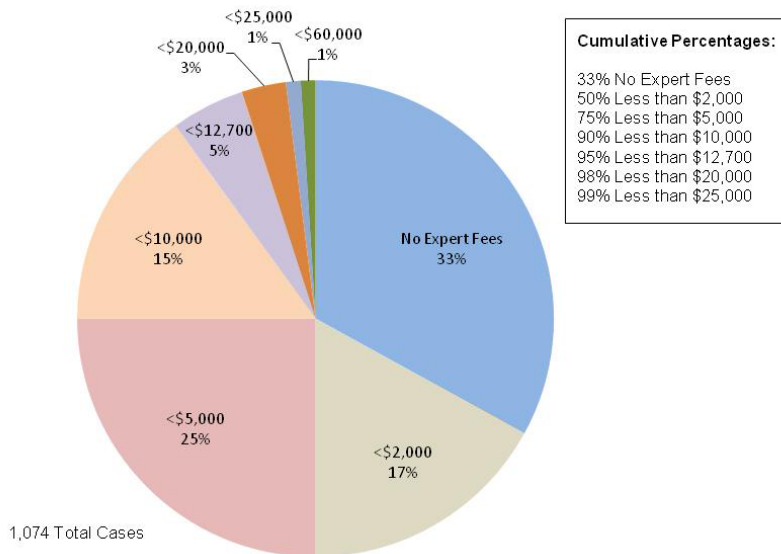
The most significant factor driving the individual cost of a potentially capital case at the trial level is the DA's decision whether to proceed capitally. Proceeded capital cases cost at least 3 times more than similar cases that proceeded non-capital. The average cost of a potentially capital case at the trial level by disposition and whether the case proceeded capitally or non-capitally is presented in the table below. Regardless of whether the case ended in a trial, plea, or dismissal, a proceeded capital case costs 3 to 5 times more than a proceeded non-capital case. For example, in FY05, the average cost of a proceeded capital case that went to trial was \$94,953, compared to \$23,649 for a proceeded non-capital case that went to trial. In FY04, the average cost of a proceeded capital case that ended in a plea was \$49,138, compared to \$14,717 for a proceeded non-capital case that ended in a plea.

Post IDS Average Expenditures per Potentially Capital Case at the Trial Level by FY Case Was Opened							
(Includes Cases with Outstanding Fees from All or Half the Attorneys, Cases with Late Penalty Fees, and Cases Missing Only a Small Percentage of Attorney's Fees. Excludes Cases Where There Is Still Time to Submit a Fee Application.)							
Disposition	FYOpen	Proceeded Capital			Proceeded Non-Capital		
		No. Cases	Average	Median	No. Cases	Average	Median
Trials	FY02**	37	89,136	70,906	32	18,024	16,745
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The DA's decision whether to seek the death penalty is also the driving factor underlying the use of experts in potentially capital cases at the trial level. The two pie charts below show the breakdown of expert fee awards in proceeded non-capital and proceeded capital cases at the trial level.* Proceeded non-capital cases at the trial level have no expert fees 33% of the time compared to just 10% in proceeded capital cases. Moreover, total expert fees in proceeded non-capital cases at the trial level are less than \$5,000 75% of the time compared to less than 33% of the time in proceeded capital cases.

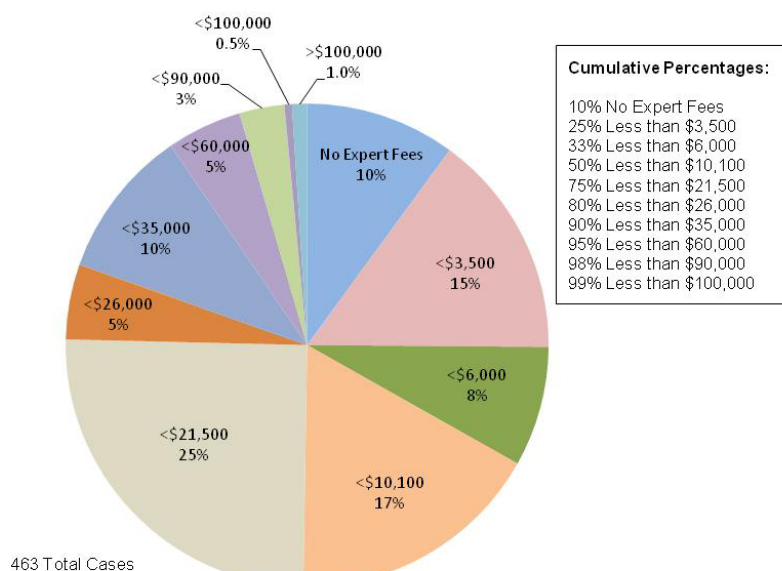
Breakdown of Expert Fee Awards in Proceeded Non-Capital Cases All Cases Disposed FY02 thru FY08 YTD

(as of 11/11/07)



Breakdown of Expert Fee Awards in Proceeded Capital Cases All Cases Disposed FY02 thru FY08 YTD

(as of 11/11/07)



* 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 believes 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*.

North Carolina has a Tradition of Charging Most Alleged Intentional Homicides as First Degree

If a defendant is accused of committing an intentional homicide, he or she could be charged with first degree murder, second degree murder, or voluntary manslaughter depending on the circumstances of the case. However, the tradition in North Carolina has been to charge the vast majority of alleged intentional homicide as first degree or undesignated murder. The table below shows a breakdown of intentional homicides and how defendants were charged. Over the last six years, 86% to 88% of intentional homicides have been charged as first degree or undesignated murder, although more than 83% of first degree or undesignated murder cases are disposed as second degree or less. (See the table on page 11 for dispositions of first degree murder cases.)

83% of first degree or undesignated murder cases end in a conviction of 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 capital, defense counsel are paid at the higher rate of \$95 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).

North Carolina Intentional Homicide Charges (as reported in ACIS*)						
	2002	2003	2004	2005	2006	2007
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.						

Between FY02 and FY06, the average cost of a potentially capital case was \$27,834, compared to an average cost of \$1,931 for a second degree murder case (a B2 felony class) or \$1,385 for a voluntary manslaughter case (a D felony class).

60% of proceeded capital cases end in a conviction of second degree or less.

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

The study looked at all dispositions for all potentially capital cases at the trial level that opened after the revisions to G.S. 15A-2004, which gave prosecutors discretion to try first degree murder cases non-capitally even if there is evidence of an aggravating factor. The table, *Post June 30, 2001 Potentially Capital Cases at the Trial Level by Disposition and Average Cost per Case*, on the following page presents the resolution of potentially capital cases at the trial level by type of disposition and whether the case proceeded capital or proceeded non-capital.

Over 83% of all potentially capital cases at the trial level have ended in a conviction of second degree murder or less and over 12% have ended in a voluntary dismissal, no true bill, or no probable cause finding.² 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 22% ended in a conviction of *less* than second degree murder.

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 \$14,170 compared to class B2 or D felonies, which cost \$1,931 and \$1,385 respectively.

This data should be very helpful in discussing with district attorneys and other court actors ways to reduce spending in potentially capital cases.

Methodology

Data on the number of cases and dispositions include cases disposed by April 22, 2008. Expenditure data include cases closed in the IDS database by November 11, 2007, but does not include 495 cases that the Office of the Capital Defender closed in the IDS database in April 2008 based on a cross-check with ACIS. Since Public Defender Offices and the Office of the Capital Defender do not report hours data or cost per case data, this study analyzed expenditures for potentially capital cases at the trial level handled by PAC. Since the average hourly rates of Assistant Public Defenders (APDs) and Assistant Capital Defenders (ACDs) were below the \$85 hourly rate for PAC in potentially capital cases, IDS suspects that the average cost for potentially capital cases at the trial level for APDs and ACDs would likely be either the same or lower than the average cost for cases handled by PAC.

Limitations

Inevitably, there is a time lag between events and when data can be collected and analyzed. In addition, since potentially capital cases generally take two or more years to be resolved, the most recent expenditure behavior will not be reflected in the data until the currently open cases close. The study used the most recent data available, which included all potentially capital cases that had been disposed and reported to IDS and for which all fee applications from attorneys and experts had been submitted, processed, and paid by November 11, 2007. But, due to the inevitable time lag involved in closing potentially capital cases at the trial level and collecting the data on these cases, the study included a limited number of cases which opened in FY06, and very few cases which opened in FY07 and FY08. In fact, the number of FY07 and FY08 cases was too small for IDS to accurately calculate average case costs for these fiscal years. Therefore the study does not include the most recent trends in spending on potentially capital cases at the trial level. IDS will continue to monitor spending on potentially capital cases at the trial level and will update this study on a regular basis.

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

	A	B	C	D	E	I	J	K	L	M	N
1	Post June 30, 2001 Potentially Capital Cases at the Trial Level by Disposition and Average Expenditure per Case (As of 4/22/2008, Based on Warrant Served Date)										
	Disposition	Total Disposed Cases	% of Disp.	Disposed Cases with All Fees Known	Mean		Disposition	Total Disposed Cases	% of Disp.	Disposed Cases with All Fees Known	Mean
2	<i>Proceeded Capital</i>						<i>All Potentially Capital</i>				
3	Resentencing - Death	2	0.3%	1	\$ 214,074		Resentencing - Death	2	0.1%	1	\$ 214,074
4	Resentencing - Life	7	1.0%	3	\$ 130,789		Resentencing - Life	9	0.3%	3	\$ 130,789
5	Trial - Sentencing Hearing, Death	20	2.7%	13	\$ 149,101		Trial - Sentencing Hearing, Death	20	0.8%	13	\$ 149,101
6	Trial - Life (Sen. Hearing Unknown)	96	13.1%	54	\$ 100,753		Trial - Life (Sen. Hearing Unknown)	200	7.7%	117	\$ 60,585
7	Trial - Guilty, 2nd Murder	17	2.3%	7	\$ 90,592		Trial - Guilty, 2nd Murder	78	3.0%	39	\$ 35,743
8	Trial - Guilty, Voluntary Manslaughter	7	1.0%	3	\$ 35,344		Trial - Guilty, Voluntary Manslaughter	36	1.4%	20	\$ 21,466
9	Trial - Guilty, Other Felony	1	0.1%				Trial - Guilty, Other Felony	12	0.5%	8	\$ 26,712
10	Trial - Not Guilty	23	3.1%	11	\$ 106,236		Trial - Not Guilty	75	2.9%	43	\$ 47,487
11	Mistrial	9	1.2%	5	\$ 177,713		Mistrial	22	0.8%	8	\$ 123,845
12	Plea - Sentencing Hearing, Death	1	0.1%	1	\$ 83,006		Plea - Sentencing Hearing, Death	1	0.0%	1	\$ 83,006
13	Plea - 1st Degree, Life	162	22.1%	96	\$ 59,804		Plea - 1st Degree, Life	197	7.5%	112	\$ 53,220
14	Plea - 2nd Degree Murder	254	34.7%	146	\$ 44,883		Plea - 2nd Degree Murder	840	32.2%	464	\$ 24,505
15	Plea - Access After Murder	24	3.3%	15	\$ 28,277		Plea - Access After Murder	69	2.6%	41	\$ 17,527
16	Plea - Voluntary Manslaughter	25	3.4%	12	\$ 38,819		Plea - Conspiracy Commit Murder	3	0.1%	1	\$ 20,440
17	Plea - Involuntary Manslaughter	5	0.7%	3	\$ 12,298		Plea - Voluntary Manslaughter	297	11.4%	160	\$ 15,989
18	Plea - Other Felony	45	6.1%	24	\$ 38,617		Plea - Involuntary Manslaughter	141	5.4%	83	\$ 9,413
19	No True Bill Found	1	0.1%				Plea - Other Felony	238	9.1%	143	\$ 15,811
20	Voluntary Dismissal without Leave	25	3.4%	8	\$ 71,763		Plea - Misdemeanor or other Non-felony	6	0.2%	5	\$ 5,072
21	Not Competent to Proceed	2	0.3%	1	\$ 96,096		No Probable Cause Found	40	1.5%	20	\$ 7,719
22	Abated	5	0.7%	3	\$ 26,799		No True Bill Found	9	0.3%	7	\$ 4,186
23	Other	2	0.3%	1	\$ 4,858		Voluntary Dismissal without Leave	272	10.4%	143	\$ 12,795
24	All Capital	733	100.0%	407	\$ 63,706		Voluntary Dismissal with Leave	8	0.3%	1	\$ 999
25	<i>Proceeded Non-Capital</i>						Not Competent to Proceed	9	0.3%	4	\$ 35,036
26	Resentencing - Life	1	0.1%				Not Guilty by reason of insanity	4	0.2%	2	\$ 15,652
27	Trial - Life No Sentencing Hearing	101	5.7%	63	\$ 26,155		Abated	19	0.7%	10	\$ 15,072
28	Trial - Guilty, 2nd Murder	55	3.1%	31	\$ 23,578		Other	5	0.2%	3	\$ 3,308
29	Trial - Guilty, Voluntary Manslaughter	26	1.5%	16	\$ 19,264		Total	2,612	100.0%	1,452	\$ 28,363
30	Trial - Guilty, Other Felony	10	0.6%	8	\$ 26,712		% All Cases 2nd Degree or Less		2,143	83.3%	
31	Trial - Not Guilty	46	2.6%	32	\$ 27,292		% All Cases Less 2nd Degree		1,225	47.6%	
32	Mistrial	13	0.7%	3	\$ 34,063		% All Cases Dismissed, No True Bill, No Probable Cause		321	12.5%	
33	Plea - 1st Degree, Life	32	1.8%	16	\$ 13,717		% All Cases Acquitted, Dismissed, No True Bill, No Probable Cause		396	15.4%	
34	Plea - 2nd Degree Murder	567	31.8%	318	\$ 15,148		% Proceeded Capital Cases 2nd Degree or Less		429	59.1%	
35	Plea - Access After Murder	44	2.5%	26	\$ 11,325		% Proceeded Capital Cases Less 2nd Degree		158	21.8%	
36	Plea - Conspiracy Commit Murder	3	0.2%	1	\$ 20,440		% Proceeded Capital Dismissed, No True Bill, No Probable Cause		26	3.6%	
37	Plea - Voluntary Manslaughter	259	14.5%	147	\$ 14,222		% Proceeded Capital Acquitted, Dismissed, No True Bill, No Probable Cause		49	6.7%	
38	Plea - Involuntary Manslaughter	130	7.3%	80	\$ 9,304						
39	Plea - Other Felony	187	10.5%	118	\$ 11,286						
40	Plea - Misdemeanor or other Non-felony	6	0.3%	5	\$ 5,072						
41	No Probable Cause Found	31	1.7%	20	\$ 7,719						
42	No True Bill Found	8	0.4%	7	\$ 4,186						
43	Voluntary Dismissal without Leave	236	13.2%	134	\$ 9,274						
44	Voluntary Dismissal with Leave	7	0.4%	1	\$ 999						
45	Not Competent to Proceed	6	0.3%	3	\$ 14,682						
46	Not Guilty by reason of insanity	4	0.2%	2	\$ 15,652						
47	Abated	12	0.7%	7	\$ 10,047						
48	Other	1	0.1%	1	\$ 2,295						
49	All Non-Capital	1,785	100.0%	1,039	\$ 14,444						
50	Capital Status Unknown	94	100.0%	6	\$ 10,638						
51	All Unknown										

Note: Total number of cases and percentages above exclude Abated, Not Competent to Proceed, Not Guilty By Reason of Insanity, and Voluntary Dismissals with Leave Dispositions.

	A	B	C	D	E	F	G	H	I	J	K	L
1	Post IDS Potentially Capital Cases at the Trial Level by FY Disposed											
2	(as of 4/22/08)											
3			Total		Capital		Non-Capital		Unknown		Exclude	
4	FY Open	FY Disposed	Count	% of FY Total	Count	% of FY Total	Count	% of FY Total	Count	% of FY Total	Count	% of FY Total
5	FY02	FY02	77	14.4%	12	6.2%	62	19.4%	3	15.0%	-	0.0%
6		FY03	232	43.5%	78	40.2%	147	46.1%	7	35.0%	-	0.0%
7		FY04	141	26.5%	55	28.4%	79	24.8%	7	35.0%	-	0.0%
8		FY05	49	9.2%	25	12.9%	22	6.9%	2	10.0%	-	0.0%
9		FY06	22	4.1%	17	8.8%	5	1.6%	-	0.0%	-	0.0%
10		FY07	5	0.9%	4	2.1%	1	0.3%	-	0.0%	-	0.0%
11		FY08	3	0.6%	2	1.0%	1	0.3%	-	0.0%	-	0.0%
12		Still Open	4	0.8%	1	0.5%	2	0.6%	1	5.0%	-	0.0%
13		Total	533	100.0%	194	100.0%	319	100.0%	20	100.0%	-	0.0%
14	FY03	FY03	77	13.0%	11	5.3%	61	17.4%	5	14.7%	-	0.0%
15		FY04	230	38.9%	64	30.8%	158	45.1%	8	23.5%	-	0.0%
16		FY05	158	26.7%	67	32.2%	85	24.3%	6	17.6%	-	0.0%
17		FY06	65	11.0%	38	18.3%	25	7.1%	2	5.9%	-	0.0%
18		FY07	33	5.6%	22	10.6%	11	3.1%	-	0.0%	-	0.0%
19		FY08	4	0.7%	2	1.0%	1	0.3%	1	2.9%	-	0.0%
20		Still Open	25	4.2%	4	1.9%	9	2.6%	12	35.3%	-	0.0%
21		Total	592	100.0%	208	100.0%	350	100.0%	34	100.0%	-	0.0%
22	FY04	FY04	59	10.7%	4	2.8%	49	13.5%	6	14.6%	-	0.0%
23		FY05	229	41.7%	39	27.1%	176	48.5%	14	34.1%	-	0.0%
24		FY06	121	22.0%	38	26.4%	80	22.0%	3	7.3%	-	0.0%
25		FY07	65	11.8%	30	20.8%	33	9.1%	2	4.9%	-	0.0%
26		FY08	27	4.9%	19	13.2%	8	2.2%	-	0.0%	-	0.0%
27		Still Open	47	8.6%	14	9.7%	17	4.7%	16	39.0%	-	0.0%
28		Unknown	1	0.2%	-	0.0%	-	0.0%	-	0.0%	1	100.0%
29		Total	549	100.0%	144	100.0%	363	100.0%	41	100.0%	1	100.0%
30	FY05	FY02	1	0.2%	1	0.7%	-	0.0%	-	0.0%	-	0.0%
31		FY05	58	10.5%	5	3.6%	51	13.3%	2	7.4%	-	0.0%
32		FY06	181	32.8%	29	20.7%	145	37.9%	7	25.9%	-	0.0%
33		FY07	152	27.6%	44	31.4%	104	27.2%	3	11.1%	1	100.0%
34		FY08	63	11.4%	27	19.3%	36	9.4%	-	0.0%	-	0.0%
35		Still Open	96	17.4%	34	24.3%	47	12.3%	15	55.6%	-	0.0%
36		Total	551	100.0%	140	100.0%	383	100.0%	27	100.0%	1	100.0%
37	FY06	FY06	57	10.1%	4	2.8%	51	12.9%	2	9.1%	-	0.0%
38		FY07	144	25.6%	25	17.2%	117	29.5%	2	9.1%	-	0.0%
39		FY08	161	28.6%	48	33.1%	111	28.0%	2	9.1%	-	0.0%
40		Still Open	201	35.7%	68	46.9%	117	29.5%	16	72.7%	-	0.0%
41		Total	563	100.0%	145	100.0%	396	100.0%	22	100.0%	-	0.0%
42	FY07	FY07	62	11.5%	5	4.5%	53	13.4%	3	9.7%	1	100.0%
43		FY08	123	22.8%	18	16.1%	101	25.6%	4	12.9%	-	0.0%
44		Still Open	354	65.7%	89	79.5%	241	61.0%	24	77.4%	-	0.0%
45		Total	539	100.0%	112	100.0%	395	100.0%	31	100.0%	1	100.0%
46	FY08	FY08	15	6.3%	-	0.0%	12	7.5%	3	9.7%	-	0.0%
47		Still Open	225	93.8%	50	100.0%	147	92.5%	28	90.3%	-	0.0%
48		Total	240	100.0%	50	100.0%	159	100.0%	31	100.0%	-	0.0%
49	Total	FY02	78	2.2%	13	1.3%	62	2.6%	3	1.5%	-	0.0%
50		FY03	309	8.7%	89	9.0%	208	8.8%	12	5.8%	-	0.0%
51		FY04	430	12.1%	123	12.4%	286	12.1%	21	10.2%	-	0.0%
52		FY05	494	13.8%	136	13.7%	334	14.1%	24	11.7%	-	0.0%
53		FY06	446	12.5%	126	12.7%	306	12.9%	14	6.8%	-	0.0%
54		FY07	461	12.9%	130	13.1%	319	13.5%	10	4.9%	2	66.7%
55		FY08	396	11.1%	116	11.7%	270	11.4%	10	4.9%	-	0.0%
56		Still Open	952	26.7%	260	26.2%	580	24.5%	112	54.4%	-	0.0%
57		Unknown	1	0.0%	-	0.0%	-	0.0%	-	0.0%	1	33.3%
58		Total	3,567	100.0%	993	100.0%	2,365	100.0%	206	100.0%	3	100.0%

	A	B	C	D	E	F
1	Post IDS Average Expenditures per Potential Capital Case at the Trial Level (Closed Cases, Excludes Cases Where There is Still Time to Submit a Fee Application)					
2		FY	No. Cases	Average Total Fees	Average Attorney Fees	Average Expert Fees
3	<i>Proceeded Capital</i>					
4	Resentencing	FY02	2	\$156,559	\$103,910	\$105,298
5		FY03	3	\$129,087	\$95,816	\$33,271
6		FY05	1	\$35,477	\$24,232	\$9,606
7		Total	6	\$117,584	\$86,676	\$42,943
8	Trials	FY02	37	\$89,136	\$68,945	\$24,256
9		FY03	29	\$92,824	\$68,106	\$28,369
10		FY04	28	\$124,073	\$99,147	\$37,103
11		FY05	14	\$94,953	\$68,104	\$26,522
12		FY06	6	\$164,731	\$105,699	\$70,758
13		Total	114	\$104,462	\$77,968	\$30,799
14	Pleas or No Contest	FY02	114	\$37,221	\$27,662	\$10,905
15		FY03	116	\$48,215	\$35,468	\$15,251
16		FY04	57	\$49,138	\$35,348	\$17,685
17		FY05	43	\$47,374	\$29,820	\$15,709
18		FY06	16	\$28,884	\$22,388	\$15,635
19		FY07	6	\$40,712	\$29,984	\$12,874
20		Total	351	\$43,699	\$31,314	\$14,538
21	Dismissals, No Probable Cause, No True Bill	FY02	2	\$10,253	\$9,876	\$1,991
22		FY03	8	\$34,159	\$25,538	\$11,475
23		FY04	2	\$163,713	\$124,913	\$38,800
24		FY05	1	\$13,884	\$10,837	\$3,047
25		Total	12	\$51,767	\$38,979	\$13,953
26	Not Competent, Insanity	FY03	1	\$96,096	\$71,822	\$24,275
27		Total	1	\$96,096	\$71,822	\$24,275
28	Abated	FY02	1	\$6,318	\$2,172	\$4,146
29		FY03	1	\$18,435	\$12,524	\$5,911
30		FY06	1	\$55,644	\$40,440	\$15,204
31		Total	3	\$26,799	\$18,379	\$8,420
32	Other	FY02	1	\$3,732	\$3,732	\$0
33		FY03	1	\$4,858	\$4,858	\$0
34		Total	2	\$4,295	\$4,295	\$0
35	Total	FY02	157	\$50,222	\$38,094	\$15,275
36		FY03	160	\$57,235	\$41,786	\$18,017
37		FY04	88	\$76,436	\$57,461	\$24,350
38		FY05	54	\$55,964	\$37,330	\$17,848
39		FY06	22	\$67,393	\$38,573	\$25,827
40		FY07	6	\$40,712	\$29,984	\$12,874
41		Total	486	\$58,592	\$42,518	\$18,812
42	<i>Proceeded Non-Capital</i>					
43	Resentencing	FY07	1	\$3,500	*	\$3,500
44		Total	1	\$3,500	*	\$3,500
45	Trials	FY02	32	\$18,024	\$15,855	\$5,217
46		FY03	43	\$30,659	\$23,217	\$9,601
47		FY04	35	\$20,288	\$16,135	\$6,128
48		FY05	34	\$23,649	\$18,584	\$6,985
49		FY06	22	\$30,789	\$23,888	\$9,483
50		FY07	1	\$26,414	\$22,642	\$3,772
51		Total	167	\$24,442	\$19,495	\$7,408
52	Pleas or No Contest	FY02	161	\$10,887	\$8,403	\$4,250
53		FY03	151	\$13,668	\$10,632	\$5,061
54		FY04	168	\$14,717	\$11,110	\$5,122
55		FY05	142	\$14,581	\$10,600	\$5,944
56		FY06	85	\$12,624	\$9,031	\$5,648
57		FY07	41	\$9,488	\$7,244	\$3,666
58		Total	748	\$13,177	\$9,887	\$5,123
59	Dismissals, No Prob Cause, No True Bill	FY02	34	\$6,720	\$5,417	\$3,328
60		FY03	40	\$7,643	\$5,971	\$4,522
61		FY04	28	\$13,551	\$8,887	\$8,152
62		FY05	35	\$9,233	\$6,640	\$5,074
63		FY06	23	\$8,145	\$6,198	\$3,811
64		FY07	11	\$4,293	\$3,372	\$1,689
65		Total	171	\$8,679	\$6,331	\$4,839
66	Not Competent, Insanity	FY02	2	\$21,088	\$14,937	\$6,151
67		FY03	1	\$18,157	\$8,754	\$9,403
68		FY04	1	\$13,146	\$3,800	\$9,347
69		FY05	1	\$1,870	\$1,870	.
70		Total	5	\$15,070	\$8,859	\$7,763

	A	B	C	D	E	F
1	Post IDS Average Expenditures per Potential Capital Case at the Trial Level (Closed Cases, Excludes Cases Where There is Still Time to Submit a Fee Application)					
2		FY	No. Cases	Average Total Fees	Average Attorney Fees	Average Expert Fees
71	Abated	FY02	2	\$13,283	\$10,427	\$5,712
72		FY03	1	\$10,698	\$10,698	.
73		FY04	1	\$15,879	\$14,584	\$1,295
74		FY05	3	\$3,450	\$3,689	\$1,486
75		FY06	1	\$14,418	\$7,041	\$7,377
76		FY07	1	\$8,659	\$5,292	\$3,367
77		Total	9	\$9,619	\$8,231	\$3,454
78	Other	FY04	2	\$1,410	\$2,295	.
79		Total	2	\$1,410	\$2,295	.
80	Total	FY02	231	\$11,371	\$8,981	\$4,353
81		FY03	236	\$15,747	\$12,066	\$5,947
82		FY04	234	\$15,356	\$11,555	\$5,594
83		FY05	215	\$14,930	\$11,071	\$5,979
84		FY06	128	\$14,859	\$11,056	\$6,003
85		FY07	55	\$8,633	\$6,694	\$3,327
86		Total	1,099	\$14,170	\$10,734	\$5,477
87	All Potentially Capital					
88	Resentencing	FY02	2	\$156,559	\$103,910	\$105,298
89		FY03	3	\$129,087	\$95,816	\$33,271
90		FY05	1	\$35,477	\$24,232	\$9,606
91		FY07	1	\$3,500	*	\$3,500
92		Total	7	\$103,323	\$86,676	\$36,369
93	Trials	FY02	67	\$60,098	\$46,075	\$17,156
94		FY03	70	\$56,141	\$41,701	\$18,508
95		FY04	64	\$69,126	\$52,286	\$21,062
96		FY05	47	\$43,702	\$32,890	\$13,346
97		FY06	28	\$59,491	\$41,419	\$24,072
98		FY07	1	\$26,414	\$22,642	\$3,772
99		Total	277	\$58,219	\$43,623	\$18,271
100	Pleas or No Contest	FY02	271	\$21,254	\$16,482	\$7,486
101		FY03	265	\$29,302	\$21,799	\$10,132
102		FY04	227	\$24,218	\$17,278	\$9,031
103		FY05	195	\$22,099	\$15,507	\$8,806
104		FY06	119	\$17,467	\$12,012	\$8,005
105		FY07	47	\$13,474	\$10,210	\$5,105
106		Total	1,124	\$23,170	\$17,009	\$8,678
107	Dismissals, No Prob Cause, No True Bill	FY02	35	\$7,745	\$6,300	\$3,161
108		FY03	48	\$12,063	\$9,301	\$6,418
109		FY04	29	\$24,356	\$16,889	\$11,378
110		FY05	35	\$9,459	\$6,760	\$4,968
111		FY06	23	\$8,145	\$6,198	\$3,811
112		FY07	11	\$4,293	\$3,372	\$1,689
113		Total	181	\$11,724	\$8,715	\$5,873
114	Not Competent, Insanity	FY02	2	\$21,088	\$14,937	\$6,151
115		FY03	2	\$57,127	\$40,288	\$16,839
116		FY04	1	\$13,146	\$3,800	\$9,347
117		FY05	1	\$1,870	\$1,870	.
118		Total	6	\$28,574	\$19,353	\$11,066
119	Abated	FY02	3	\$10,961	\$7,675	\$4,929
120		FY03	2	\$14,566	\$11,611	\$5,911
121		FY04	1	\$15,879	\$14,584	\$1,295
122		FY05	3	\$3,450	\$3,689	\$1,486
123		FY06	2	\$35,031	\$23,741	\$11,291
124		FY07	1	\$8,659	\$5,292	\$3,367
125		Total	12	\$13,914	\$10,998	\$5,110
126	Other	FY02	1	\$3,732	\$3,732	.
127		FY03	1	\$4,858	\$4,858	.
128		FY04	2	\$1,410	\$2,295	.
129		Total	4	\$2,852	\$3,628	.
130	Total	FY02	388	\$27,092	\$21,015	\$9,752
131		FY03	396	\$32,510	\$24,391	\$11,780
132		FY04	322	\$32,049	\$23,970	\$11,797
133		FY05	269	\$23,167	\$17,153	\$9,294
134		FY06	150	\$22,564	\$16,458	\$10,218
135		FY07	61	\$11,788	\$9,063	\$4,491
136		Total	1,586	\$27,834	\$20,883	\$10,475
137	* Attorney work on case was pro bono.					
138						