

NEBRASKA FACTS

ABOUT NEBRASKA'S DEATH PENALTY

False Claim #1: Defense costs in death penalty trials are three times higher than non-death penalty trials.

Fact: The primary responsibility of the Nebraska Commission on Public Advocacy (NCPA) is to provide a defense for indigent death penalty defendants. Such defense is provided at no additional cost to county property taxpayers. The NCPA is funded by court fees with no reliance upon any General Funds and has reported to the Legislature that eliminating the death penalty would only have a “minimal fiscal impact” on its budget.

False Claim #2: It takes an average of 26 days to seat a “death penalty qualified” jury.

Fact: The average length of jury selection in Nebraska’s death penalty cases is 3 days.

False Claim #3: A death penalty prosecution that goes to trial requires in excess of six times more court days than a comparable life without parole prosecution.

Fact: An average of only 7.4 days were spent in trial during the cases of Nebraska’s 10 death row inmates.

False Claim #4: Death penalty sentencing takes approximately 21 court days.

Fact: The average length of both sentencing phases in Nebraska’s death penalty cases is 3.6 days.

False Claim #5: It costs significantly more to house death row inmates than other inmates

Fact: There is no significant difference between the annual incarceration costs of death row inmates and any other inmate in a single cell.

False Claim #6: The cost of death penalty appeals exceeds other criminal appeals.

Fact: In Nebraska, a murderer sentenced to death has no additional appeal rights than a murderer who has not been sentenced to death. Eliminating the death penalty will not reduce the number of appeals available to convicted murderers. Of the approximate 500 criminal appeals filed in Nebraska per year, less than 1% are filed in death penalty cases.

NEBRASKANS DESERVE ACCURATE NEBRASKA DATA

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- The Facts in Nebraska: The primary responsibility of the Nebraska Commission on Public Advocacy (NCPA) is to provide a defense for indigent death penalty defendants. Such defense is provided at no additional cost to county property taxpayers. The NCPA is funded by court fees with no reliance upon any General Funds and has reported to the Legislature that eliminating the death penalty would only have a “minimal fiscal impact” on its budget.

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Summary

In a study entitled “The Economic Impact of the Death Penalty on the State of Nebraska: A Taxpayer Burden?”, Dr. Ernest Goss claims that, “Nebraska’s maintenance of the death penalty cost the state, in 2015 dollars, approximately \$14.6 million annually.” Goss’s projected savings to the State of Nebraska through the elimination of the death penalty are not based on Nebraska-specific data. When such Nebraska-specific data is considered, Goss’s conclusion cannot be supported. Goss’s conclusions on cost are not credible.

Nebraska’s 10 Death Row Inmates:

The Nebraska Department of Correctional Services currently houses 10 murderers who have been sentenced to death. These 10 inmates are responsible for committing some of Nebraska’s most heinous murders.

1. In Douglas County, Carey Dean Moore, on separate occasions, premeditatedly robbed and murdered two Omaha taxicab drivers. On the first occasion, Moore called for a cab with the intent of robbing and shooting the driver. The cab driver was Reul Eugene Van Ness. Moore targeted elderly drivers so that they would be easier to subdue. On the second occasion, Moore got into a cab driven by Maynard Hegeland, and again robbed and shot the driver.

2. In Richardson County, John L. Lotter went to the home of Lisa Lambert searching for Teena Brandon. Lotter intended to kill Brandon because Brandon, who was transgender, had reported to law enforcement that Lotter had raped her. Upon arriving at Lambert’s house, Lotter kicked in the door and found Lambert, Brandon, and Phillip DeVine. Brandon was hiding under blankets at the foot of a bed. Lotter shot Brandon who fell back onto the bed. Lambert, who was also lying on the bed, was then shot in the stomach by Lotter. Lambert did not die from this initial gunshot wound. Lotter then shot Lambert again, this time in the eye. Lotter had DeVine sit on the living room couch, where Lotter killed him by shooting him twice. Lotter then went back to the bedroom and fired several more shots to ensure that everyone was dead. Lambert’s infant child was also in the house at the time of the murders, and was left there by Lotter with the three dead adults.

3. In Scotts Bluff County, Raymond Mata kidnapped Adam Gomez, who was the three year-old son of Mata’s girlfriend. Mata was angry that his girlfriend was pregnant with another man’s child, and he retaliated against her by killing Adam. Mata murdered Adam, and dismembered his body. Police found Adam’s crushed, skinned, and dog-chewed head wrapped in plastic and duct tape hidden in the ceiling of a basement room. Adam’s skull showed multiple fractures, and his head had been severed from his body by a sharp object. In Mata’s refrigerator, police found a foil package containing Adam’s flesh. Adam’s flesh was also found on Mata’s toilet plunger, and portions of his jaw were found clogging Mata’s sewer line. Pieces of Adam’s flesh, both cooked and uncooked, were found in Mata’s dog’s food bowl and dog food bag.

4. In Douglas County, Arthur L. Gales was at the apartment of a woman with her and her children, Latara and Tramar Chandler. Gales and the woman went out, and during that time Gales severely beat her and left her for dead. Fearful that the children could place him with their mother, Gales returned to the apartment and killed them. Thirteen year-old Latara, was found dead in a bedroom, naked from the waist down. Gales sexually assaulted and strangled her. Tramar, who

was seven years old, was found dead in the bathtub. Gales strangled and drowned him. The autopsies indicated that Gales had strangled each child for a significant amount of time even after they had died.

5. – 7. In Madison County, Jorge Galindo, Jose Sandoval, and Eric F. Vela committed the most violent bank robbery in Nebraska history. The robbers devised a plan whereby they would murder all present at the bank to conceal their identities. During the robbery, five victims were shot and killed. Lola Elwood died from a gunshot wound to the back of her head. Lisa Bryant was shot three times, once each in her neck, her left hand, and right thigh. She died from the wound to the back of her neck. Sam Sun was shot on the right side of his face and jaw, as well as on the right side of his chest and abdomen. Jo Mausbach died from a single gunshot wound to the left side of her mouth, jaw, and neck. Evonne Tuttle died from a gunshot wound to the back of her head.

8. In Scotts Bluff County, Jeffrey Hessler raped a young newspaper carrier. Hessler approached the girl from behind, forced her to the ground, and raped her. The girl did not see Hessler's face. Later, Hessler abducted a second newspaper carrier, 15 year-old Heather Guerrero. Hessler pulled Heather into his car screaming. A witness heard the screams and saw Hessler's car speeding away. Heather's body was found the next morning in an abandoned building in rural Scotts Bluff County. She was wearing only a t-shirt. Hessler raped Heather, and shot her at close range in the head. Hessler confessed to kidnapping, raping, and murdering Heather and to raping the first victim.

9. In Douglas County, Roy L. Ellis abducted 12 year-old Amber Harris as she was walking home from her school bus stop. Amber's remains were found in Hummel Park over five months after she disappeared. Ellis raped Amber and murdered her with a hammer. Ellis struck Amber in the head with the hammer causing two skull fracture, both of which were sufficient to cause her death. Ellis had previously raped and impregnated both of his stepdaughters.

10. In Hall County, Marco Torres went to the home of Edward Hall to confront another man, Tim Donahue, about a drug debt. Donahue rented a room on the second floor of Hall's residence. Donahue was not home at the time, so Torres tied Hall up in a recliner with an electrical cord. When Donahue returned, Torres went upstairs to talk with him. An argument ensued and Torres shot Donahue three times in the head and chest. Hall was yelling when Torres went back downstairs, so Torres shot Hall, too. Hall died of three gunshot wounds to the head from close range. Hall was found with his mouth gagged with a cloth belt.

Unsubstantiated Costs:

On August 15, 2016, Goss & Associates Economic Solutions (Goss) released a study entitled "The Economic Impact of the Death Penalty on the State of Nebraska: A Taxpayer Burden?" This study was commissioned by Retain a Just Nebraska, an anti-death penalty

organization formed to defeat the ballot referendum to repeal LB268.¹ Retain a Just Nebraska assisted Goss in facilitating the conclusions made in the study.²

Goss concluded that “Nebraska’s maintenance of the death penalty cost the state, in 2015 dollars, approximately \$14.6 million annually.”³ There were five main factors cited as the basis for the costs: 1) Defense costs; 2) Pretrial/jury selection/trial/sentencing; 3) Court days and court costs; 4) Incarceration/prison system costs; and 5) Appeals costs.⁴ However, Goss’s study is misleading.

To conduct his study, Goss relied on data obtained from sources outside of Nebraska. These non-Nebraska sources were largely studies conducted or funded by other anti-death penalty organizations. Goss even misquoted other studies to fit the political agenda of the anti-death penalty forces.⁵ Tellingly, Goss did not make an effort to collect Nebraska-specific data, even though doing so would have provided a more accurate picture of the costs associated with Nebraska’s use of the death penalty. Had the study utilized data from the cases of Nebraska’s 10 death row inmates, the numbers would have been much, much lower.

In addressing the claims made by Goss, the Attorney General’s Office has collected actual data specific to each of the 10 death row inmates in Nebraska. This data was obtained from the case files and bills of exceptions maintained within the respective offices of the clerks of the district courts.

1. Defense costs.

The first factor cited for the expense of the death penalty is the costs associated with the defense. Goss claims that the defense costs in death penalty trials are three times higher than non-death penalty trials.⁶ Such estimates are statistical extrapolations based upon questionable data from other states. In reality, Nebraska has created a system to minimize defense costs in all murder cases, including those involving the death penalty.

Nebraska has developed an economically efficient system for the representation of indigent individuals accused of murder. The current options minimize expenses for such representation and apply equally in death penalty and non-death penalty cases. Six of the 10 Nebraska death row inmates were represented at trial and/or on direct appeal by either the Nebraska Commission on Public Advocacy or the respective county public defender’s office, which greatly reduces the costs of those cases.

In 1995, the Nebraska Legislature enacted a bill in response to the costs associated with the Michael Ryan and John Lotter murder trials in Richardson County. The Legislature reined in

¹ GOSS & ASSOCIATES ECONOMIC SOLUTIONS, THE ECONOMIC IMPACT OF THE DEATH PENALTY ON THE STATE OF NEBRASKA: A TAXPAYER BURDEN? Cover (2016).

² *Id.* at i.

³ *Id.* at 1.

⁴ *Id.* at 5-10.

⁵ *Id.* at 23 (quote attributed to Kent S. Scheidegger; however, Scheidegger has said that his conclusion is the exact opposite of what Goss attributes to him).

⁶ *Id.* at 5; WHY IS THE DEATH PENALTY SO EXPENSIVE? (Handout).

the cost of death penalty prosecutions by “providing for indigent defense services” through a state agency to “lessen the impact on county property taxpayers of the cost of a high profile death penalty case.”⁷ The result of LB646 was the creation of the Nebraska Commission on Public Advocacy (NCPA), the primary responsibility of which is to provide a defense for indigent death penalty defendants. Such defense is provided at no additional cost to county property taxpayers. Effectively, the Legislature created a state-level public defender’s office, similar to those already existing at the county level.

Unfortunately, Ryan and Lotter committed their crimes and were tried before the creation of the NCPA. Had the NCPA existed in its current form prior to Ryan’s and Lotter’s trials, Richardson County would have saved a significant amount of money. Savings did come to Richardson County later, however, because the NCPA was created in time to represent Lotter during the appeals process.

The use of the NCPA or a county public defender greatly reduces the defense costs versus a court-appointed private attorney, because the NCPA and public defenders are funded in advance with little effect from whether a case is punishable by the death penalty or not. In fact, the NCPA does not rely on any general funds from the state or any county. “The commission (NCPA) continues to be funded by court fees with no reliance upon any General Funds to operate.”⁸

In all death penalty cases in which the defendant is indigent, the appointment of either the NCPA or the county public defender eliminates defense costs associated with the appointment of private attorneys. In the larger counties, such as Douglas, Sarpy or Lancaster, when the public defender has a conflict, the appointment of the NCPA to represent an indigent defendant also eliminates defense costs. In smaller counties where there is not a public defender, or where the public defender may not have the requisite experience, judges can appoint the NCPA in all death penalty cases.

Certain situations involving multiple defendants, such as the Norfolk bank robbery, may require the appointment of private attorneys by the courts, but these are very uncommon and extraordinary events. Three of Nebraska’s death row inmates (Galindo, Sandoval, and Vela) were co-defendants in cases arising out of the same murders, therefore they could not be represented by the same attorneys. Sandoval was represented by the Madison County Public Defender’s Office, the NCPA represented Vela, and the district court appointed private counsel to represent Galindo. Fortunately, these types of situations in which multiple co-defendants are charged with the same crimes are rare in Nebraska and have minimal long term financial impacts on counties.

Nebraska’s system employs mechanisms at the state and county level that do indeed minimize the defense costs associated with death penalty trials. The NCPA has reported to the Legislature that eliminating the death penalty would only have a “minimal fiscal impact” on its budget.⁹ The NCPA has said that “a death penalty case is like any other first degree murder case

⁷ 1995 Nebraska Laws, LB646, § 2

⁸ A LEGISLATOR’S GUIDE TO NEBRASKA STATE AGENCIES, Prepared by the Nebraska Legislative Fiscal Office, available at <http://nebraskalegislature.gov/pdf/reports/fiscal/2014legguide.pdf>, at 495.

⁹ Fiscal Note, March 19, 2015, LB268, 104th Leg., 1st Sess. (Neb. 2015).

for purposes of caseloads.”¹⁰ For all first degree murder cases the NCPA assigns two defense attorneys.¹¹ It does not matter whether the case involves the death penalty or life imprisonment. This negligible impact on the NCPA would hold true for the public defenders’ offices in Nebraska’s larger counties as well. Thus, where the defendant is represented by the NCPA or a public defenders’ office, elimination of the death penalty will have a minimal impact on defense costs. One of the only ways that a positive fiscal impact would be realized by elimination of the death penalty is if the NCPA is also eliminated. In such an instance, the State would save money by no longer needing to fund one of its agencies. However, LB268 does not eliminate the NCPA and will not affect that agency’s funding.

2. & 3. Pretrial/jury selection/trial/sentencing & Court days and court costs.

The next factors cited by Goss as increasing the costs associated with the death penalty are the time spent on pretrial matters, jury selection, trial and sentencing, court days and court costs. The second and third factors are inextricably intertwined and best discussed together. To do otherwise simply repeats the same factors to falsely multiply the estimated financial impact. While this area of the study references pretrial, jury selection, trial, and sentencing, the narrative only references specific figures for jury selection and sentencing. Anecdotally, Goss says that pretrial motions “add the time and expense of appointed counsel.”¹² This is a true statement for any type of case, whether that be a minor theft or first degree murder. And, Goss does not mention the length of the actual trials at all. Furthermore, Goss fails to acknowledge that the length of portions of a trial, the number of court days, and the costs are a result of the complexity of the case rather than the punishment that may be imposed.

A. Jury Selection.

In addressing jury selection and sentencing, Goss cited a Colorado study in claiming that these processes take much longer in death penalty cases. That Colorado study found that, on average, a “death penalty prosecution that goes to trial requires in excess of six times more court days than a comparable life without parole prosecution,” generally attributing that extra time to jury selection and sentencing.¹³ Specifically, the Colorado study says it takes an average of 26 days to seat a “death penalty qualified” jury.¹⁴ The numbers contained in the Goss study, which are derived from the Colorado study, do not reflect the actual numbers related to Nebraska’s 10 death row inmates.

In Nebraska, a juror must be “qualified” to sit on a jury in a death penalty case. During the jury selection process, a potential juror shall be struck for good cause if his or her “opinions are such as to preclude him [or her] from finding the accused guilty of an offense punishable with death.”¹⁵ However, this process does not take a great deal longer in a death penalty case than it does in any other criminal case, let alone a case punishable by life imprisonment. The actual length

¹⁰ *Id.*

¹¹ *Id.*

¹² GOSS, *supra* at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Neb. Rev. Stat. § 29-2006(3) (Reissue 2008).

of jury selections below have been rounded up to the nearest number of days. With regard to Nebraska's 10 death row inmates, selection of a "death penalty qualified" jury took:

1. Carey Dean Moore – 0 days¹⁶
2. John L. Lotter – 3 days
3. Raymond Mata – 3 days
4. Arthur L. Gales – 2 days¹⁷
5. Jorge Galindo – 4 days
6. Jose Sandoval – 3 days
7. Jeffrey Hessler – 3 days
8. Eric F. Vela – 5 days¹⁸
9. Roy L. Ellis – 3 days
10. Marco Torres – 1 day

These facts show that jury selection in Nebraska-specific death penalty cases does not take as long as claimed by Goss. The average length of jury selection in Nebraska's death penalty cases is 3 days, which is much shorter than the average of 26 days, as claimed in the Goss and Colorado studies.¹⁹ In fact, the total length of jury selection in the cases of Nebraska's 10 death row inmates was 27 days combined. That means it took one more day to select 9 "death penalty qualified" juries in Nebraska than it did to select the average *single* "death penalty qualified" jury cited by Goss and the Colorado study.

B. Sentencing.

Regarding sentencing, Goss asserts that a single death penalty sentencing takes approximately 21 court days.²⁰ This figure, derived from the Colorado study, is also refuted by the Nebraska-specific data. Under Nebraska's current system, there are actually two proceedings that make up the sentencing phase of a death penalty case. Once a jury determines that aggravating circumstances exist, a three-judge panel conducts a sentencing determination proceeding.²¹ This sentencing determination proceeding is the first phase of sentencing. The second phase follows the first, and that is when the actual sentence is pronounced. Goss stated that life imprisonment "sentencing generally takes only hours in some cases," which is probably true.²² However, the same can be said for some of the sentencings which occurred in Nebraska's death penalty cases. The actual length of the death penalty sentencings below have been rounded up to the nearest

¹⁶ Moore waived a jury trial and the existence of aggravating circumstances was found by a judge or judges as LB1, 97th Leg., 3d Spec. Sess. (2002) had not yet been enacted.

¹⁷ It took 1 day to select the jury for the guilt/innocence phase in 2001; however, Gales was resentenced in 2003 and a jury had to be impaneled for the aggravating circumstances trial. The case file indicates that this jury selection took 1 day as well.

¹⁸ Vela pled guilty to all charges, therefore a jury was not needed for the guilt/innocence trial. A jury was selected for the aggravating circumstances trial.

¹⁹ A jury was not selected for Moore's trial, so his case is not counted in the average.

²⁰ GOSS, *supra* at 5.

²¹ Neb. Rev. Stat. § 29-2521 (Reissue 2008).

²² GOSS, *supra* at 5.

number of days. If a proceeding only took an hour, it will still be counted as one day. So, with regard to Nebraska's 10 death row inmates, the sentencing phases took:²³

1. Carey Dean Moore
 - a. Initial sentencing determination proceeding – 1 day
 - b. Initial sentence pronouncement – 1 day
 - c. Subsequent sentencing determination proceeding – 3 days
 - d. Subsequent sentence pronouncement – 1 day
 - e. Total sentencing days (initial) – 2 days
 - f. Total sentencing days (subsequent) – 4 days
 - g. Total sentencing days (combined) – 6 days**
2. John L. Lotter
 - a. Sentencing determination proceeding – 5 days
 - b. Sentence pronouncement – 1 day
 - c. Total sentencing days – 6 days**
3. Raymond Mata
 - a. Initial sentencing determination proceeding – 1 day
 - b. Initial sentence pronouncement – 1 day
 - c. Subsequent sentencing determination proceeding – 1 day
 - d. Subsequent sentence pronouncement – 1 day
 - e. Total sentencing days (initial) – 2 days
 - f. Total sentencing days (subsequent) – 2 days
 - g. Total sentencing days (combined) – 4 days**
4. Arthur L. Gales
 - a. Initial sentencing determination proceeding – 1 day
 - b. Initial sentence pronouncement – 1 day
 - c. Subsequent sentencing determination proceeding – 1 day
 - d. Subsequent sentence pronouncement – 1 day
 - e. Total sentencing days (initial) – 2 days
 - f. Total sentencing days (subsequent) – 2 days
 - g. Total sentencing days (combined) – 4 days**
5. Jorge Galindo
 - a. Sentencing determination proceeding – 4 days
 - b. Sentence pronouncement – 1 day
 - c. Total sentencing days – 5 days**
6. Jose Sandoval
 - a. Sentencing determination proceeding – 6 days
 - b. Sentence pronouncement – 1 day
 - c. Total sentencing days – 7 days**
7. Jeffrey Hessler

²³ Moore, Mata, and Gales all had two sentencing proceedings. The first sentencing is referred to as “initial”. Following the initial sentencings in each of their cases, resentencings were ordered by appellate courts. These resentencings are referred to as “subsequent”.

- a. Sentencing determination proceeding – 1 day
 - b. Sentence pronouncement – 1 day
 - c. **Total sentencing days – 1 day**²⁴
- 8. Eric F. Vela
 - a. Sentencing determination proceeding – 4 days
 - b. Sentence pronouncement – 1 day
 - c. **Total sentencing days – 5 days**
- 9. Roy L. Ellis
 - a. Sentencing determination proceeding – 1 day
 - b. Sentence pronouncement – 1 day
 - c. **Total sentencing days – 2 days**
- 10. Marco Torres
 - a. Sentencing determination proceeding – 1 day
 - b. Sentence pronouncement – 1 day
 - c. **Total sentencing days – 2 days**

Based on these facts, the sentencing process in Nebraska-specific death penalty cases does not take as long as claimed by Goss. When considering the sentence that each of Nebraska’s 10 death row inmates is currently serving, the average length of both sentencing phases in Nebraska’s death penalty cases is 3.6 days. When considering that three of the 10 death row inmates had their sentences vacated on appeal and were resentenced, the average length of all sentencing phases combined is 4.2 days.²⁵ Both of these figures are much smaller than the 21 days that Goss and the Colorado study claim are taken up by a single death penalty sentencing.

C. Trial.

While Goss did not provide any information to support his inference that death penalty trials take longer, the Attorney General’s Office has gathered the actual numbers for the length of trials in the cases of Nebraska’s 10 death row inmates. Under Nebraska’s current system there are two phases of a death penalty jury trial: 1) the guilt/innocence trial and 2) the aggravating circumstances trial. The following numbers represent the length of each death penalty trial rounded up to the nearest number of days, and include days devoted solely to jury deliberations:

- 1. Carey Dean Moore
 - a. Guilt/innocence trial – 5 days²⁶
 - b. Aggravating circumstances trial – 0 days²⁷
 - c. **Total trial days – 5 days**
- 2. John L. Lotter
 - a. Guilt/innocence trial – 9 days

²⁴ Hessler’s sentencing determination proceeding and the pronouncement of his sentence occurred on the same day.

²⁵ No inmates’ death sentence, imposed pursuant to Nebraska’s current statutory death penalty procedures, has been vacated, which means that no resentencings have been required in such cases.

²⁶ Moore waived his right to a trial by jury, and was instead tried by a judge.

²⁷ Moore was tried under a previous statute that did not require a jury to find the existence of aggravating circumstances. In Moore’s case, this function was performed simultaneously with the sentencing determination proceeding, and is accounted for in the sentencing numbers above.

- b. Aggravating circumstances trial – 0 days²⁸
 - c. Total trial days – 9 days**
- 3. Raymond Mata
 - a. Guilt/innocence trial – 7 days
 - b. Aggravating circumstances trial – 3 days
 - c. Total trial days – 10 days**
- 4. Arthur L. Gales
 - a. Guilt/innocence trial – 5 days
 - b. Aggravating circumstances trial – 3 days
 - c. Total trial days – 8 days**
- 5. Jorge Galindo
 - a. Guilt/innocence trial – 4 days
 - b. Aggravating circumstances trial – 2 days
 - c. Total trial days – 6 days**
- 6. Jose Sandoval
 - a. Guilt/innocence trial – 6 days
 - b. Aggravating circumstances trial – 3 days
 - c. Total trial days – 9 days**
- 7. Jeffrey Hessler
 - a. Guilt/innocence trial – 4 days
 - b. Aggravating circumstances trial – 1 day
 - c. Total trial days – 5 days**
- 8. Erick Vela
 - a. Guilt/innocence trial – 0 days²⁹
 - b. Aggravating circumstances trial – 5 days³⁰
 - c. Total trial days – 5 days**
- 9. Roy L. Ellis
 - a. Guilt/innocence trial – 8 days
 - b. Aggravating circumstances trial – 1 day
 - c. Total trial days – 9 days**
- 10. Marco Torres
 - a. Guilt/innocence trial – 8 days
 - b. Aggravating circumstances trial – 0 days³¹
 - c. Total trial days – 8 days**

²⁸ Lotter was tried under a previous statute that did not require a jury to find the existence of aggravating circumstances. In Lotter's case, this function was performed simultaneously with the sentencing determination proceeding, and is accounted for in the sentencing numbers above.

²⁹ Vela pled guilty to all charges, therefore a guilt/innocence trial was not held.

³⁰ Since no guilt/innocence trial was held in Vela's case, evidence that would have been adduced at such trial had to be presented at the aggravating circumstances trial, which is why Vela's aggravators trial took longer than the rest.

³¹ Torres waived his right to have an aggravating circumstances trial before a jury. In Torres' case, this function was performed simultaneously with the sentencing determination proceeding, and is accounted for in the sentencing numbers above.

These facts show that an average of 7.4 days were spent in trial during the cases of Nebraska's 10 death row inmates. Even death penalty trials in Nebraska are not long, drawn-out ordeals. In comparison to first degree murder trials in other states, the length of death penalty trials in Nebraska is minimal. For example, the O.J. Simpson murder trial began on January 24, 1995, and the jury did not reach a verdict until October 3, 1995 (253 calendar days or 175 work days). The length of these proceedings do not exceed those of non-death penalty murder prosecutions with any statistical significance. In fact, the Attorney General's Office has handled appeals of non-death penalty cases in which the trials have been longer than those of some of the cases of Nebraska's death row inmates.³² The length of trials in criminal cases is determined by the complexity of each individual case rather than the punishment that may be imposed. Furthermore, our review could not discern any variances between pretrial court days and cost of death penalty and non-death penalty cases in Nebraska.

When considered together, the average length of jury selection, trial, and sentencing in the cases of Nebraska's death row inmates is shorter than either the average jury selection or sentencing cited by Goss (26 days and 21 days, respectively).³³ When utilizing the number of days for the initial sentencing, the combined average duration of jury selection, trial, and sentencing is 13.5 days.³⁴ This shows that the average length of Goss's hypothetical jury selection – one of three stages of the proceedings – takes nearly twice as long as the time it actually takes to pick a jury, try the case, and sentence the defendant in Nebraska (all three stages combined). Further, Nebraska averages less than one death penalty case per year. Again, Goss's numbers do not reflect the reality of Nebraska's use of the death penalty.

4. Incarceration/prison system costs.

The next factor cited by Goss as a source of increased expenses associated with the death penalty is the costs of incarceration. Goss states that "It costs significantly more to house death-row inmates than other prisoners since, unlike other prisoners, death-row inmates are housed in single cells; thus more physical space is required to house them."³⁵ To support this claim Goss cites data from California and New Jersey, saying that "death row housing costs an additional \$90,000 per year, per inmate" in California and \$23,721 more to house a death row inmate in New Jersey.³⁶ Those are significant numbers, but they do not reflect reality in Nebraska.

Nebraska's death row inmates are housed at the Tecumseh State Correctional Institution (TSCI). The average cost per inmate per year at the TSCI is \$39,087, including death row. This

³² *State of Nebraska v. Jeremy D. Foster*, Douglas Co. Dist. Ct., CR10-9071301 (voir dire to verdict totals 11 days); *State of Nebraska v. Christopher A. Edwards*, Douglas Co. Dist. Ct., CR10-9062330 (voir dire to verdict totals 12 days); *State of Nebraska v. Danny R. Robinson, Jr.*, Douglas Co. Dist. Ct., CR10-9053190 (voir dire to verdict totals 14 days); *State of Nebraska v. Juan E. Castaneda*; Douglas Co. Dist. Ct., CR10-9071352 (voir dire to verdict totals 18 days).

³³ GOSS, *supra* at 5.

³⁴ This number increases to 13.7 days when utilizing the number of days for the subsequent sentencings of Moore, Mata, and Gales. And, when the total number of sentencing days is used (initial + subsequent), the duration is 14.3 days.

³⁵ *Id.* at 6.

³⁶ *Id.* at 7.

is not significantly more than what it costs to house an inmate at the Nebraska State Penitentiary (NSP) (\$36,168 / year), the Nebraska Correctional Center for Women (NCCW) (\$38,312 / year), or the Work Ethic Camp (WEC) (\$38,861 / year). And, the cost to house a death row inmate at TSCI is actually less than the cost to house an inmate at the Lincoln Correctional Center (LCC) (\$43,007 / year), or a juvenile inmate at the Nebraska Correctional Youth Facility (NCYF) (\$87,043 / year). Thus, the Nebraska-specific facts show that it does not cost much more to house a death row inmate at TSCI than it does to house an inmate at either the NSP, the NCCW, or the WEC, and it is actually cheaper to house a death row inmate than an inmate at the LCC or the NCYF.³⁷

TSCI contains many single-occupancy cells, and only 10 of those cells are occupied by inmates on death row. Many non-death row inmates within the Nebraska Department of Correctional Services (NDCS) are housed in single cells. There is no significant difference between housing death row inmates and any other inmates in a single cell. Abolishing the death penalty will not affect where Nebraska's current death row inmates will be housed. The gallery housing death row is in restrictive housing, so even if those cells were no longer identified as death row, these cells would still be restrictive housing and could not be reopened as general population. There is a much higher financial impact due to disciplinary treatment of non-death row inmates than there is to house those inmates sentenced to death.

There is no significant difference between the cost of housing a death row inmate and housing any other inmate in a single cell at TSCI. This is why the NDCS has said that eliminating the death penalty will have a minimal fiscal impact on the agency. Specifically, the NDCS said that "the future impact of individuals convicted of capital crimes receiving life without parole instead of the death penalty would be minimal."³⁸

5. Appeals costs.

The final factor cited by Goss is his claim of excessive appeals by death row inmates.³⁹ In Nebraska, a murderer sentenced to death has no additional appeal rights than a murderer who has not been sentenced to death. Eliminating the death penalty will not reduce the number of appeals available to convicted murderers. On the contrary, elimination of the death penalty in Nebraska will make life imprisonment the state's new "ultimate punishment," and as a result, murderers and defense attorneys can be expected to challenge life sentences in the same or similar manner in which they currently challenge sentences of death.

The Attorney General's office handles all criminal appeals filed in the State of Nebraska, including those filed by inmates who are facing the death penalty. The total number of criminal appeals filed is approximately 500 per year. Of that number, less than 1% are filed in death penalty cases.

The Attorney General's Office has gathered Nebraska-specific data regarding the actual appeals of all of Nebraska's death row inmates. When the total number of appeals by all current

³⁷ Nebraska Department of Correctional Services, *Annual Cost Report Fiscal Year 2015*.

³⁸ Fiscal Note, March 3, 2015 & March 19, 2015, LB268, 104th Leg., 1st Sess. (Neb. 2015).

³⁹ GOSS, *supra* at 7-8.

death row inmates is divided by the number of their years of incarceration, the result is less than one-half of an appeal filed per year.⁴⁰ This low rate of appeals obviously does not require any additional staff in either the Attorney General's Office, the NCPA, or the county public defenders' offices in order to handle the caseload. Therefore, there is no money to be saved in this area by eliminating the death penalty.

⁴⁰ Nebraska's 10 death row inmates file an average of only 0.444 criminal appeals each year that they are incarcerated.

CONSIDER GOSS CALCULATIONS

Reference to report Table 3.4

State	Death Row Inmates*	Goss Report Annual Death Penalty Spending	Annual Cost Per Inmate
California	743	\$121,212,121.00	\$163,138.79
Florida	396	\$51,000,000.00	\$128,787.88
Nebraska	10	\$14,126,000.00	\$1,412,600.00
North Carolina	155	\$11,000,000.00	\$70,967.74

*Death Penalty Information Center; <http://www.deathpenaltyinfo.org/documents/FactSheet.pdf>