ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	**Type of Action Requested:**	**Subject:**
December 13, 2018	_X_ Formal Action/Request __ Information Only __ Other	Report from the Capital Case Oversight Committee

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FROM:

Hon. Ronald Reinstein (ret.)
Chair

DISCUSSION:

Supreme Court Administrative Order No. 2016-11 required the Capital Case Oversight Committee to submit two reports to the Arizona Judicial Council. The Oversight Committee provided the first report in 2017. Judge Reinstein will now present the second report, which includes five recommendations.

RECOMMENDED COUNCIL ACTION:

Accept the Oversight Committee's 2018 Report and support appropriate recommendations, including Recommendation #1 ("review specified jury issues in capital cases") by:

a. Requesting the State Bar to review current jury instructions in capital cases, and to simplify and clarify those instructions so they can be understood by those who ordinarily serve as jurors in capital cases; and

b. Expanding judicial training of judges who conduct capital case trials to include additional instruction on jury selection.

Progress Report
of the
Capital Case Oversight Committee
to the
Arizona Judicial Council

December 2018

ADVANCING JUSTICE TOGETHER | 2014-2019

Capital Case Oversight Committee
Members

Hon. Ronald Reinstein, Judge of the Superior Court in Maricopa County (ret.)

Hon. Kent Cattani, Judge of the Court of Appeals, Division One

Ms. Donna Hallam, Staff Attorney, Arizona Supreme Court

Hon. Kellie Johnson, Judge of the Superior Court in Pima County

Ms. Michele Lawson, Maricopa County Office of the Public Advocate

Mr. Dan Levey, Arizona Crime Victim Rights Law Group

Mr. Martin Lieberman, Maricopa County Legal Defender

Mr. William Montgomery, Maricopa County Attorney

Hon. Samuel Myers, Judge of the Superior Court in Maricopa County

Mr. Daniel Patterson, Office of the Maricopa County Legal Advocate

Ms. Christina Phillis, Maricopa County Office of Public Defense Services

Mr. David Rodriguez, Office of the Pinal County Attorney

Mr. Natman Schaye, Arizona Capital Representation Project

Ms. Lacey Stover Gard, Office of the Arizona Attorney General

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Part I: Executive Summary.

Supreme Court Administrative Order No. 2016-11 extended the term of the Capital Case Oversight Committee ("Oversight Committee") to December 31, 2018. The Order required the Oversight Committee to submit two progress reports to the Arizona Judicial Council. The Oversight Committee's 2017 report included limited data and no recommendations. This is the Oversight Committee's second report, which includes more complete data and several recommendations.

The Supreme Court established the Oversight Committee by Administrative Order No. 2007-92. That Order directed the Oversight Committee to "study and recommend measures to facilitate capital case reduction efforts," particularly in Maricopa County. Since 2008, when the Oversight Committee began collecting capital case data, the Superior Court in Maricopa County has had more than a 60% decrease in capital cases pending trial. There has been a commensurate decrease in the number of pending capital cases statewide. Supporting data is provided below and in the appendices to this report.

The Oversight Committee's December 2015 report to the Arizona Judicial Council requested an extension of its term so it could continue to monitor capital case data. The Supreme Court thereafter entered above-noted Administrative Order No. 2016-11, which extended the Oversight Committee's term to December 31, 2018. While the Oversight Committee was initially focused on capital caseloads in Maricopa County, and to a lesser extent, Pima County, the 2016 Order contained a broader charge that the Committee "shall continue to identify issues affecting the administration of capital cases and to propose recommendations to improve the judicial administration of these cases."

This report makes these five recommendations:

#1: Review specified jury issues in capital cases.

#2: Support a statutory increase in the compensation rate for appointed counsel in capital post-conviction proceedings.

#3: Change the current structure for post-judgment appointment of counsel in capital cases.

#4: Support the filing of a rule petition seeking an amendment to Rule 6.8(e) of the Arizona Rules of Criminal Procedure.

#5: Support an extension of the Oversight Committee's term.

Part II: Background.

The Oversight Committee has existed for more than a decade. The Committee's predecessor was the Capital Case Task Force, which was established by Administrative Order 2007-18 to study issues arising from an "unprecedented number of capital cases currently awaiting trial in Maricopa County." The Capital Case Task Force submitted its report and recommendations to the Arizona Judicial Council in September 2007. Its concluding recommendation was that the Arizona Supreme Court establish a committee to monitor capital caseload reduction efforts in Maricopa County. The Capital Case Task Force's report envisioned that this new committee would hold meetings and "assure interested parties that there will be a cooperative environment in which to share information, air concerns, and facilitate development of any formal policies deemed necessary." The Supreme Court established the Capital Case Oversight Committee by the entry of Administrative Order 2007-92 on December 6, 2007. Justice Ryan served as chair of the Oversight Committee until his passing in 2012, and Judge Reinstein has served as chair since then.

As noted in its December 2017 report, "The Oversight Committee has in fact functioned as a 'cooperative environment' since its creation and during multiple extensions of its term. Its meetings are relatively brief (they take place over the lunch hour) and infrequent (recently, twice yearly), but its agendas are full, and its meetings are well-attended by the members." Various guests also attend committee meetings, including prosecutors, defense counsel, and court administrators, as well as victim advocates, representatives from the Federal Public Defender, and news journalists. The Oversight Committee's agendas have included rule petitions, the qualifications of capital case counsel, and judicial training. Meetings typically begin with presentations by Committee members of current capital case data.

Part III: Capital Case Data.

A. Superior Court. The Oversight Committee has collected data since 2008 on the number of capital cases pending trial statewide. Please see Appendix 4 for a compilation of that data. As of 2018, capital cases were pending in the superior court in 4 of Arizona's 15 counties. Here is a summary of the pending capital caseloads by county, beginning with the 11 counties where there currently are no pending capital cases.

Apache, Cochise, Coconino, Gila, Graham, Greenlee, LaPaz, Navajo, and Santa Cruz Counties have no pending capital cases. Although Apache and Cochise Counties periodically had capital cases during the past 10 years, there were no resulting death sentences. The other seven counties have not had any capital cases during the past 10 years.

Mohave County during the past 10 years has had between zero and 3 capital cases. It currently has no pending cases. The Mohave County Attorney filed motions in two cases earlier this year to withdraw death notices, citing in one motion the unlikelihood of a speedy resolution; multiple changes in defense counsel and resultant delays; even if the State did secure a death sentence, the improbability that the death penalty would actually be carried out; and, "given the defendant's current sentence on other charges, he is almost certain to die in prison due to natural causes."

Yuma County had 5 pending capital cases in 2008, but the number steadily declined. In 2017, one defendant was sentenced to death. As of September 2018, there were no pending capital cases in Yuma County.

Pima County had 14 pending capital cases in 2008. By 2011, the number of pending cases had dropped fifty percent, to 7 cases. In 2015, there were 5 pending cases, in 2016 there were two, and in 2017 there were none. As of September 2018, there was one case in Pima County with a death notice.

Yavapai County had 3 capital cases in 2008, and as many as 7 during 2013-2014. It now has four pending cases, one of which is a remand from federal court for resentencing.

Maricopa County has the great majority of Arizona's capital cases. In 2008, when the Oversight Committee began collecting data, there were 127 pending capital cases in Maricopa County. Please see Appendix 1. Three years later, following implementation of new policies for capital case management, the number had dropped to 68 pending cases. The number stayed in the 60's for the next five years, then declined into the 50's. There were 48 pending capital cases in Maricopa County in September 2018. The Maricopa County Office of Public Defense Services has provided a full capital defense team for about a dozen other cases pending decisions by the County Attorney on the filing of death notices. Stakeholders refer to these as "potential" cases.

Pinal County is the only county where the number of pending capital cases has increased since 2008. In 2008, it had 3 cases. In 2013, the number spiked to 10 cases, and in 2014, it peaked at 17. At the time of the Oversight Committee's 2015 report, the number had dropped to 14. As of September 2018, it had 9 capital cases, one of which was being prosecuted by the Navajo County Attorney because of a conflict. Later in September, a jury in one of the pending cases returned with a life verdict in the penalty phase. Notwithstanding the number of pending capital cases since 2008, no death sentences have been imposed in Pinal County during the past 10 years.

Statewide summary: The number of capital cases pending trial in Arizona's superior court has dropped from 155 in July 2008 to 62 cases in September 2018, a 60% reduction.

Death sentences: From the fall of 2008 to the fall of 2015 (when the Oversight Committee submitted its 2015 report to the Arizona Judicial Council), 51 defendants were sentenced to death in the superior court. From the fall of 2015 to the present time, there have been 8 additional death sentences. The 10-year statewide figure (2008 to 2018) is therefore 59 death sentences, which broken down by county is as follows: 50 in Maricopa County; 6 in Pima County; 2 in Mohave County; and 1 in Yuma County. Please see Appendix 7.

B. Supreme Court. As in the superior court, the Arizona Supreme Court has also had surges and declines in the number of pending capital cases during the past decade. As of November 2008, there were 17 direct appeals of capital convictions pending before the Arizona Supreme Court, and by October 2009, that number had increased to 23 capital appeals. But as of September 2018, that number stood at 12 direct appeals. There were also about 15 petitions for review of capital post-conviction relief proceedings ("PCRs") pending in the Supreme Court.

C. Post-Conviction. There are now 116 inmates in Arizona who have been sentenced to death. Roughly half of these inmates have pending proceedings in federal courts; the other half have direct appeals or post-conviction proceedings pending in Arizona state courts. There currently are no outstanding execution warrants. The last execution in Arizona was in July 2014. Please see Appendix 8.

Part IV: Recommendations. This report makes five recommendations.

Recommendation #1: Review specified jury issues in capital cases. A "power of twelve" study was done in Arizona about 25 years ago, which resulted in dozens of recommendations, some of them cutting-edge, for civil and criminal case juries. However, these innovations preceded *Ring v. Arizona*, 536 U.S. 584 (2002) and statutory changes about jury sentencing in the penalty phase of a capital trial, and they have not recently been reviewed or revised.

There are disparities in the jury selection process in capital cases from county to county, and even within the same county courthouse. Jurors are asked in the penalty phase to return what is essentially a subjective verdict. (Capital case jury instruction 2.6 — "mitigation assessment and the sentence burden of proof" — says in part: "In reaching a reasoned, moral judgment about which sentence is justified and appropriate, you must decide how compelling or persuasive the totality of the mitigating factors is when compared against the totality of the aggravating factors and the facts and circumstances of the case. This assessment is not a mathematical one, but instead must be made in light of each juror's individual, qualitative evaluation of the facts of the case, the severity of the aggravating factors, and the quality of the mitigating factors found by each juror.")

Because the penalty phase verdict is qualitative and moral, jurors may have difficulty comprehending their penalty phase instructions and lack a clear understanding of what is expected of them. Jury aspects of Arizona's capital cases are not well-studied or researched. The Oversight Committee requests the Supreme Court to support efforts that enhance judicial training in capital cases and that address or clarify the subjectivity of a penalty phase verdict. Details of this proposal are contained in Appendix 11. The Oversight Committee requests the Arizona Judicial Council to support this proposal, and the Chief Justice to determine its specific objectives and goals.

Recommendation #2: Support a statutory increase in the compensation rate for appointed counsel in capital post-conviction proceedings. This is a perennial recommendation of the Oversight Committee. The rate of compensation for court-appointed counsel in capital post-conviction proceedings is currently set by statute at $100. (A.R.S. § 13-4041(F) provides in part, "counsel appointed to represent a capital defendant in state postconviction relief proceedings shall be paid an hourly rate of not to exceed one hundred dollars per hour.") The federal rate for court-appointed counsel is $187 per hour. First-chair counsel in Maricopa County are compensated at the rate of $145 per hour.

The Attorney General's office, among others, supports a higher amount than currently prescribed to encourage competent counsel to apply for appointments on capital cases. An increase to $125 per hour might be inadequate to attract well-qualified counsel, and an increased hourly rate of $150 might be appropriate. But members declined this year to recommend a specific dollar figure. Instead, they recommend an amendment to the statute that would provide a floor for the hourly rate by removing the current "not to exceed" cap. The proposed statutory amendment would provide for payment at a rate "not less than one hundred dollars per hour." This is a more flexible solution and would allow a county to pay more than the minimum hourly rate without specifying a dollar amount. The Oversight Committee seeks the support of the Arizona Judicial Council for this recommendation.

Recommendation #3: Change the current structure for post-judgment appointment of counsel in capital cases. Under the current structure for capital cases, the Superior Court appoints counsel for an appeal, and the Supreme Court appoints counsel to appear in the trial court for post-conviction proceedings. Although this structure may have an historical rationale, the Oversight Committee believes a change to this structure is warranted, and it requests the Council's support.

The appellate court is more knowledgeable about the qualifications of attorneys handling appeals because it, and not the trial court, reviews their written work product and hears their oral arguments. The appellate court—i.e., the Supreme Court —should

appoint counsel for the direct appeal. Correlatively, the trial court has more knowledge about attorneys who appear in that court for capital post-conviction proceedings. The pleadings are presented to the trial court, and any evidentiary hearing is before that court. The trial court is more familiar with the qualifications of post-conviction counsel and it should appoint counsel in these proceedings.

A.R.S. § 13-4041(B) already allows the Supreme Court to delegate appointments on capital PCRs to the presiding trial court judges. The Oversight Committee envisions that the Supreme Court would delegate that authority to a presiding judge on a case-by-case basis. However, A.R.S. § 13-4041(C) requires the Court to "establish and maintain a list of persons who are qualified to represent defendants in postconviction proceedings." The Oversight Committee acknowledges that the trial court would still need to appoint attorneys who appear on the Supreme Court's list. However, a Maricopa County Capital Defense Review Committee, which already reviews applications for appointment as a capital defendant's lead trial counsel, trial co-counsel, and appellate counsel, would also do an independent review of proposed PCR counsel.

Rule 31.5(a) of the Arizona Rules of Criminal Procedure allows the superior court to appoint counsel on appeal. Recommendation #3 would require an amendment to Rule 31.5 to provide that the Supreme Court appoints counsel on the direct appeal in a capital case.

Recommendation #4: Support the filing of a rule petition seeking an amendment to Rule 6.8(e) of the Arizona Rules of Criminal Procedure. Rule 6.8(e) allows the appointment of counsel in capital cases in "exceptional circumstances" when counsel does not meet the other required qualifications. The current provision requires counsel appointed in exceptional circumstances to associate with a qualified counsel. The proposed one-word amendment, shown in Appendix 12, would require counsel to "meaningfully" associate with a qualified lawyer.

The Oversight Committee received anecdotal information that some associated attorneys do an insufficient amount of work in a case. The Oversight Committee recognizes that "meaningfully" could be hard for Rule 6.8(e) to define, so the proposed rule would include no definition. But the Oversight Committee also believes that whether work is "meaningful" could be determined by the court on a case-by-case basis. Although Committee members were evenly split on this proposal at their October 31, 2018 meeting, the Chair broke the tie by voting in favor of filing a rule petition. The Oversight Committee seeks the Council's support for filing this petition.

Recommendation #5: Support an extension of the Oversight Committee's term. There were about 140 pending capital cases in Maricopa County when the Oversight

Committee was established a decade ago. Currently, there is a fraction of that number pending.

Oversight Committee members discussed whether to now recommend an extension of the Committee's term, or whether to disband it. A minority believes that the primary rationale for which the Oversight Committee was established— to monitor a high volume of cases — has dissipated. But the great majority of members emphasize the ongoing usefulness of the Oversight Committee as a forum for discussing capital case issues that are of statewide concern. Although the number of capital cases in Maricopa County has declined considerably, it continues to be one of the top counties in the nation on death penalty cases per capita. The Oversight Committee has had recurring discussions concerning the time needed to process capital cases. It has filed several rule petitions during its existence. It has reviewed and provided input on other rule projects, such as rules proposed by the Criminal Rules Task Force and the Rule 32 Task Force. It has considered proposals and made suggestions for the manner of screening and appointing qualified counsel in capital cases. It has supported education concerning capital cases. One former member noted that the Oversight Committee should continue to exist for as long as there is a death penalty in Arizona. The current members are willing to continue their service on the Oversight Committee if the Committee's term is extended.

The Oversight Committee accordingly requests the Arizona Judicial Council to support a three-year extension of its term.

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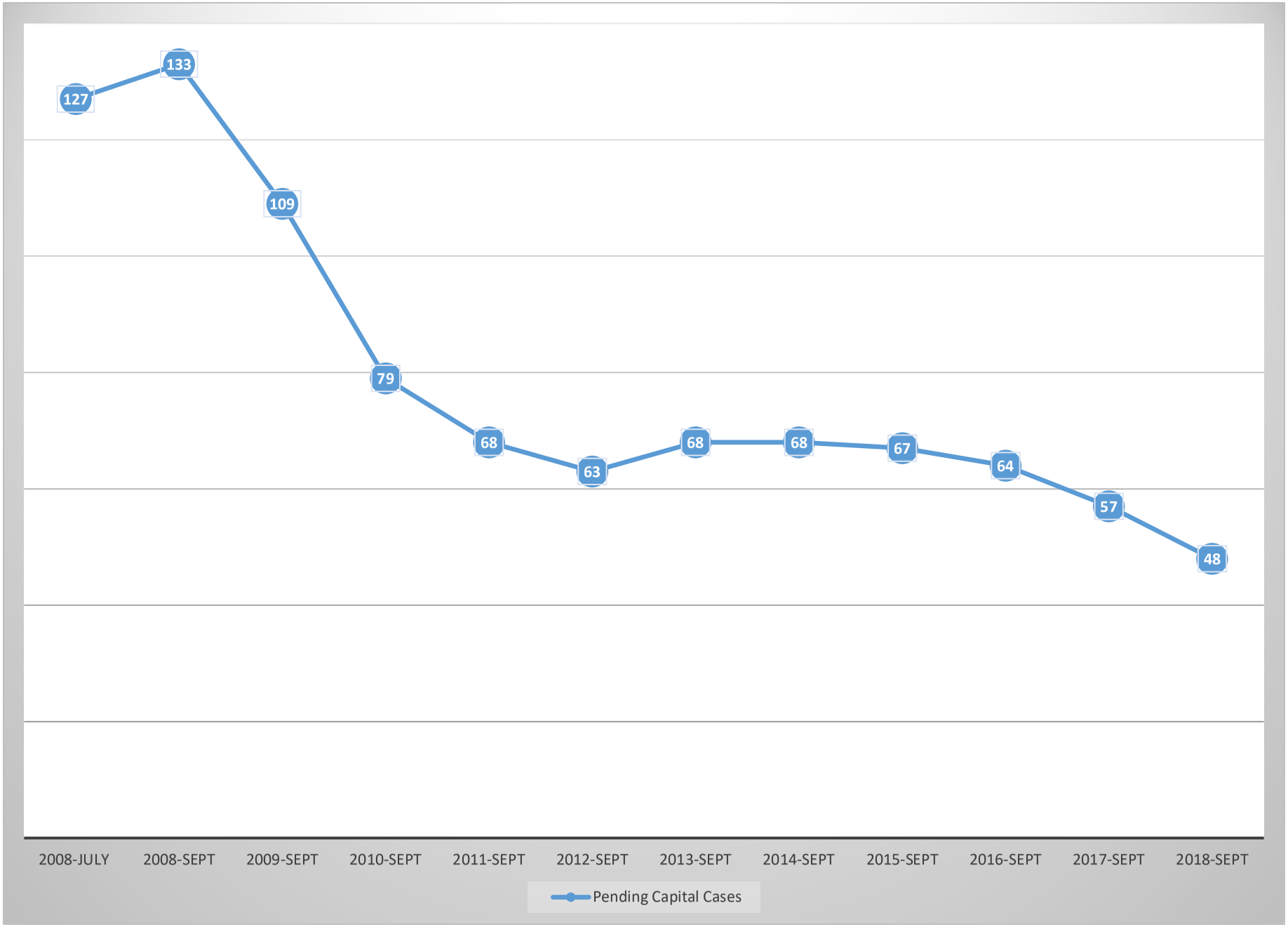
#1: Number of Capital Cases Pending Trial in the Maricopa County Superior Court, by Month: July 2008 – September 2018



Maricopa County
Seven-year capital case recap

#2: Maricopa County Capital Case Recap: October 2008 to September 2015 (7 years)

MONTH	# OF NEW CASES	# OF ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
October 2008	3	1	0
November	2	2	0
December	1	3	0
January 2009	1	2	1: Prince [*Ring*]
February	2	2	0
March	0	7	1: Hausner
April	2	5	1: Lehr [*Ring*]
May	0	4	1: Delahanty
June	0	3	1: Gallardo
July	3	4	1: Grell [*Ring*]
August	3	5	2: Cota, Hardy
September	1	5	1: Manuel
12 month sub-total	**18**	**43**	**9**
October	3	7	0
November	1	5	1: Van Winkle
December	7	6	1: Patterson
CY 2009 sub-total	23	55	11
January 2010	1	6	1: Medina
February	0	5	2: Boyston, Ovante
March	1	5	0
April	2	2	2: Joseph, Martinez
May	2	6	1: Parker
June	5	6	0
July	5	5	0
August	3	6	1: Fitzgerald
September	2	4	0
12 month sub-total	**32**	**63**	**9**
24 month sub-total	**50**	**106**	**18**
October 2010	4	3	2: Gomez, Rose
November	1	6	0
December	1	8	1: Hernandez
CY 2010 sub-total	27	62	10
January 2011	3	5	0
February	3	2	1: Burns
March	2	3	0
April	1	0	0
May	3	3	2: Naranjo, Reeves
June	1	2	0
July	1	0	0

Maricopa County
Seven-year capital case recap

MONTH	# OF NEW CASES	# ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
August 2011	4	3	0
September	2	2	1: Miller
12 month sub-total	**26**	**37**	**7**
36 month sub-total	**76**	**143**	**25**
October 2011	2	6	1: Benson
November	2	2	1: Goudeau
December	1	1	0
CY 2011 sub-total	25	29	6
January 2012	6	1	0
February	3	1	0
March	1	6	0
April	0	2	0
May	1	1	0
June	0	3	0
July	2	1	0
August	2	1	1: Lynch
September	4	2	1: Anthony
12 month sub-total	**24**	**27**	**4**
48 month sub-total	**100**	**170**	**29**
October 2012	1	0	0
November	1	2	0
December	1	1	1: Leteve
CY 2012 sub-total	22	21	3
January 2013	3	1	0
February	2	2	1: Escalante-Orozco
March	1	1	0
April	1	1	0
May	4	3	0
June	1	1	0
July	4	2	0
August	0	3	1: Gunches
September	0	0	0
12 month sub-total	**19**	**17**	**3**
60 month total	**119**	**187**	**32**
October 2013	0	2	1: V. Guarino
November	2	1	0
December	2	2	0
CY 2013 sub-total	20	19	3

Maricopa County
Seven-year capital case recap

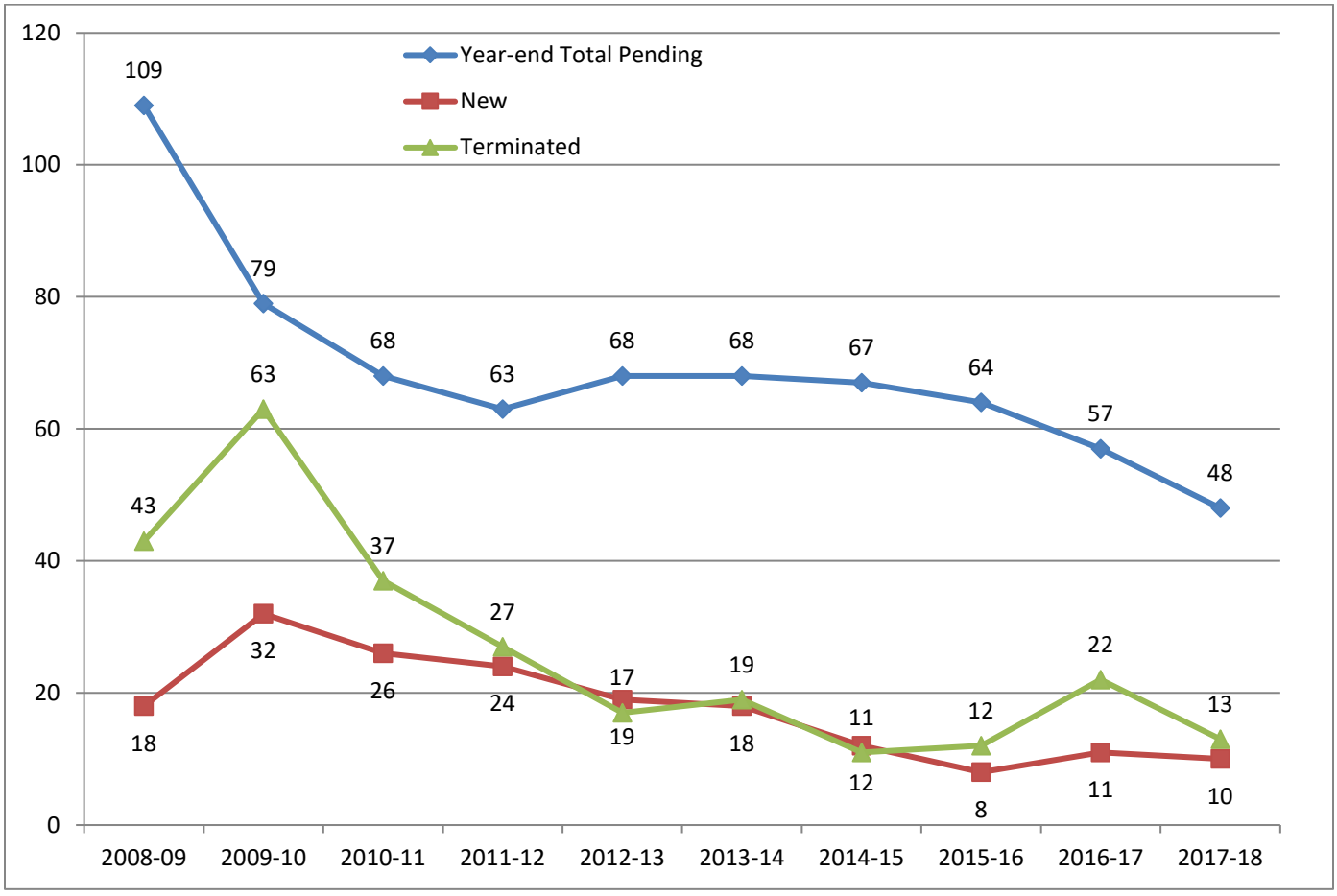
MONTH	# OF NEW CASES	# ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
January 2014	0	0	0
February	0	1	0
March	2	0	0
April	1	0	0
May	3	2	0
June	4	3	0
July	1	1	0
August	0	3	1: Hulsey
September	3	4	1: Sanders
12 month sub-total	**18**	**19**	**3**
72 month sub-total	**137**	**206**	**35**
October 2014	0	1	1: Acuna Valenzuela
November	0	0	0
December	0	2	0
CY 2014 sub-total	14	17	3
January 2015	2	5	1: Hidalgo
February	0	0	0
March	2	1	0
April	2	3	0
May	1	0	0
June	0	1	0
July	0	1	1: Rushing
August	1	0	0
September	4	0	0
12 month sub-total	**12**	**11**	**3**
84 month total	**149**	**220**	**38**

Maricopa County
2015-2018 capital case supplement

MONTH	# OF NEW CASES	# ACTIVE CASES TERMINATED	DEFENDANTS SENTENCED TO DEATH
October 2015	1	2	0
November	0	1	1: Riley
December	1	1	0
CY 2015 sub-total	14	15	3
January 2016	1	0	0
February	1	1	0
March	0	0	0
April	0	0	0
May	2	1	0
June	1	2	1: C. Johnson
July	0	2	0
August	0	0	0
September	1	2	0
12-month sub-total	**8**	**12**	**2**
96-month sub-total	**157**	**232**	**40**
October 2016	1	1	0
November	4	1	0
December	0	1	0
CY 2016 sub-total	11	9	1
January 2017	4	1	0
February	1	0	0
March	0	1	0
April	0	2	0
May	0	1	0
June	0	5	0
July	1	1	0
August	0	4	1: S. Allen
September	0	4	1: Champagne
12-month sub-total	**11**	**22**	**2**
108-month total	**168**	**254**	**42**
October 2017	1	0	0
November	2	2	1: J. Allen
December	0	0	0
CY 2017 sub-total	10	21	3
January 2018	0	2	0

February	1	2	0
March 2018	0	0	0
April	2	1	0
May	0	3	2: Robinson, A. Smith
June	0	2	0
July	1	1	0
August	3	0	0
September	1	0	0
12-month sub-total	**11**	**13**	**3**
120-month total	**179**	**267**	**45**

#3: Maricopa: Combined data summary for 12-month periods: 2008 to 2018



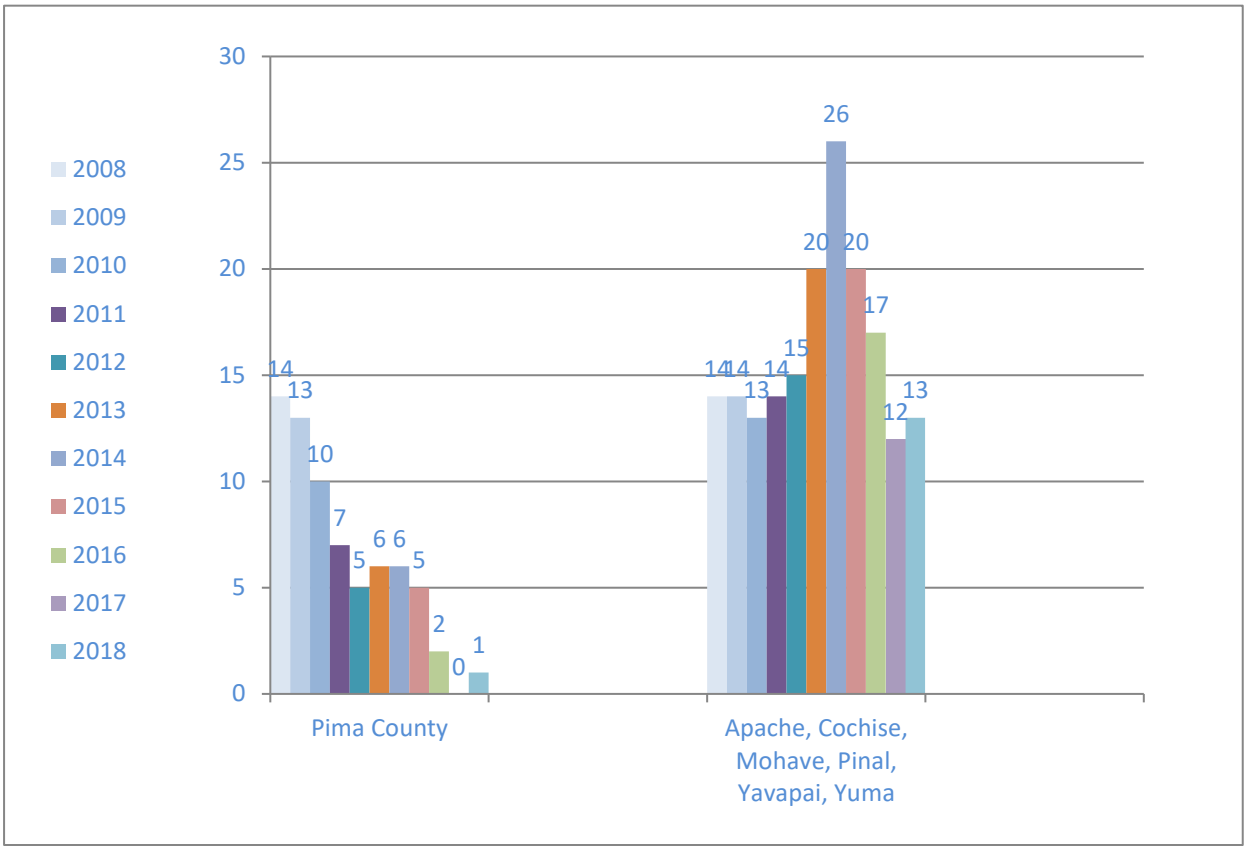
#4. Capital Cases Pending Trial in Arizona by County: 2008 to 2018

Each of these annual surveys was conducted in September, except for 2008, which was conducted in July.

Counties shown with gray shading had no pending capital cases during the 2018 survey.

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Apache	1	1	0	0	0	0	0	0	0	0	0
Cochise	0	0	1	3	3	2	1	0	0	0	0
Coconino	0	0	0	0	0	0	0	0	0	0	0
Gila	0	0	0	0	0	0	0	0	0	0	0
Graham	0	0	0	0	0	0	0	0	0	0	0
Greenlee	0	0	0	0	0	0	0	0	0	0	0
LaPaz	0	0	0	0	0	0	0	0	0	0	0
Maricopa	127	109	79	68	63	68	68	67	64	57	48
Mohave	2	3	2	1	1	0	0	2	2	2	0
Navajo	0	0	0	0	0	0	0	0	0	0	0
Pima	14	13	10	7	5	6	6	5	2	0	1
Pinal	3	4	5	5	5	10	17	14	12	8	9
Santa Cruz	0	0	0	0	0	0	0	0	0	0	0
Yavapai	3	2	2	2	5	7	7	3	2	2	4
Yuma	5	4	3	3	1	1	1	1	1	0	0
TOTAL	**155**	**136**	**102**	**89**	**83**	**94**	**100**	**92**	**83**	**69**	**62**

#5: Number of Capital Cases Pending Trial Outside Maricopa County



#6: Number of Capital Cases Pending Trial Statewide

Date	# of Cases
July 2008	155
Sept 2009	136
Sept 2010	102
Sept 2011	89
Sept 2012	83
Sept 2013	94
Sept 2014	100
Sept 2015	92
Sept 2016	83
Sept 2017	69
Sept 2018	62

#7: Number of Defendants Sentenced to Death Statewide

Year	# of Defts	Source by County
2008	5	Maricopa (5)
2009	15	Maricopa (11), Pima (3), Mohave (1)
2010	10	Maricopa (10)
2011	8	Maricopa (6), Pima (2)
2012	4	Maricopa (3), Pima (1)
2013	4	Maricopa (3), Mohave (1)
2014	3	Maricopa (3)
2015	3	Maricopa (3)
2016	1	Maricopa (1)
2017	4	Maricopa (3), Yuma (1)
2018 [9 months]	2	Maricopa (2)
2008-2018	59	Maricopa (50), Pima (6), Mohave (2), Yuma (1)

#8: Number of Executions in Arizona

Year	# of Executions
2001-2006	0
2007	1
2008	0
2009	0
2010	1
2011	4
2012	6
2013	2
2014	1
2015 - 2017	0
2018 [9 months]	0
2001-2018	15

#9. Disposition and time to disposition after trial of death noticed cases in Maricopa County October 2008 to September 2018

Excludes *Ring* remands [see the bottom of page 2 for Ring retrials]

1.	Hausner	death	715 days
2.	Maldonado	not guilty	1912
3.	Orbin	M-1	1849 [life]
4.	Delahanty	death	1342
5.	Cota	death	2013
6.	Martinez*	mistrial [hung]	--
7.	Gallardo	death	916
8.	Boyston*	mistrial	--
9.	Dietman	life	1073 [natural life]
10.	Hardy	death	1431
11.	Calvillo	life	1081
12.	Manuel	death	1741
13.	Armbruster*	mistrial	1577 [stipulated plea]
14.	Baker	life	2101 [by plea]
15.	Lawton	M-2 verdict	578
16.	Patterson	death	1340
17.	VanWinkle	death	547
18.	Medina#	death	-- [after remand]
19.	Boyston [retrial]	death	2167
20.	Fitzgerald*	mistrial	--
21.	Reeves*	mistrial	--
22.	Ovante	death	573
23.	Henderson*	mistrial	2449 [plea after notice withdrawn]
24.	Vasquez	nat life	1327
25.	Joseph	death	1610
26.	Fish*	mistrial	888 [natural life]
27.	Enriquez	life	1362
28.	Parker	death	1438
29.	Martinez [retrial]	death	1447
30.	Hunt*	mistrial	1608 [natural life]
31.	Bland	life	757 [natural life]
32.	Fitzgerald [retrial]	death	1940
33.	Sermeno	life	1495
34.	Ficklin	life	1894
35.	Rose	death	1159
36.	Gomez#	death	3833 [after remand]
37.	Reeves [retrial]*	mistrial	-- [panel released (threat during jury selection)]
38.	Burns	death	1473
39.	Hernandez	death	929

40. Naranjo	death	1490	
41. Reeves [retrial]	death	1424	
42. Goudeau	death	1770	
43. Benson	death	1192	
44. Martinson*	mistrial	2925	[after State withdrew notice]
45. J. Martinez*	mistrial	--	
46. Miller	death	1582	
47. Black	nat life	782	[sentenced per stipulation]
48. Herrera*	mistrial	1779	[State then withdrew notice]
49. Anthony	death	1386	
50. Lynch#	death	4161	[after remand]
51. Leteve	death	975	
52. Escalante-Orozco	death	1956	
53. Arias*	mistrial	--	
54. Tomlinson*	mistrial	--	[mistrial 4/13; in 9/14, p/g to M-2]
55. J. Martinez [retr.]	nat. life	2152	[sentenced per stipulation]
56. Cano	acquitted	1487	[bench trial]
57. Gunches#	death	3373	[after remand]
58. V. Guarino	death	1311	
59. Sanders	death	1814	
60. Hulsey	death	2279	
61. Acuna Valenzuela	death	1145	
62. Arias [retrial]*	mistrial	2404	[natural life after second penalty phase]
63. D. Martinez	pending	--	
64. Hidalgo	death	1381	
65. Licon	pending	--	
66. Rushing	death	1637	
67. Edwards	pending	--	
68. Riley	pending	--	

Exclude mistrials* [15] and pending [4] = 68 – 19 = 49 verdicts
% of death verdicts v. total number of verdicts = 35/49 = 71%
% of death verdicts v. total number of trials = 35/64 = 55%
% of acquittals v. total number of trials = 2/64 = 3%

Time to disposition: N = 45 cases (exclude mistrials* [15], remands# [4], pending [4]) = 1,421 days = 3.89 years [N = 45 cases, i.e., 68 - 23]

Ring trials (4):
Prince: death
Lehr: death
Grell: death
Lamar: natural life sentence following two mistrials [this was the last Ring sentencing, June 2010]

2018 Continuation:

63. D. Martinez	life	1911
65. Licon	life	1786
67. Edwards	life	1499
68. Riley	death	855
69. Lopez Jr.	nat. life	1730
70. Johnson	death	1985
71. Villalobos**	nat. life	975
72. Levis	nat. life	1252 [Riley was a co-deft]
73. Coleman	life	1218
74. Noonkester*	mistrial	-- [hung in penalty phase, retrial pending]
75. S. Allen	death	2175
76. Champagne	death	1605
77. J. Allen	death	2276 [S. Allen was a co-deft]
78. James#	life	6294 [remand, no verdict, plea on day 3, jury retrial]
79. Robinson	death	2113
80. Smith	death	1179
81. Busso-Estopellan*	mistrial	-- [hung in penalty phase, retrial pending]
82. Ricci*	mistrial	--
83. Gonzalez-Doming	mistrial	late add. [mistrial in pen. phase 2014; p/g 2018]

Exclude mistrials [4] + plea during trial [1] = 19 – 5 = 14 verdicts
% of death verdicts v. total number of verdicts = 7/14 = 50%
% of death verdicts v. total number of trials = 7/18 = 39%
% of acquittals v. total number of trials = 0/15 = 0%

Time to disposition: (exclude mistrials [4] + plea during trial [1]) = 1,611days = 4.41 years
[N = 14 cases]

**Villalobos was initially arraigned in 2004 and was sentenced to death in 2008. On 2/28/14, during a subsequent PCR, the penalty was vacated, and a new penalty trial was ordered. The time interval in this summary is measured from that date until the date of sentencing following retrial, i.e., 11/1/16.

2008 to 2018 summary (excludes Ring remands):
Exclude mistrials [19] + plea during trial [1] = 83 – 19 = 63 verdicts
% of death verdicts v. total number of verdicts =42/63 = 66.7%
% of death verdicts v. total number of trials = 42/83 = 50.6%
% of acquittals v. total number of trials = 2/83 = 2.4%

Time to disposition: (exclude mistrials [19] + remands [5]) = 1,467 days = 4.02 years
[N = 59 cases]

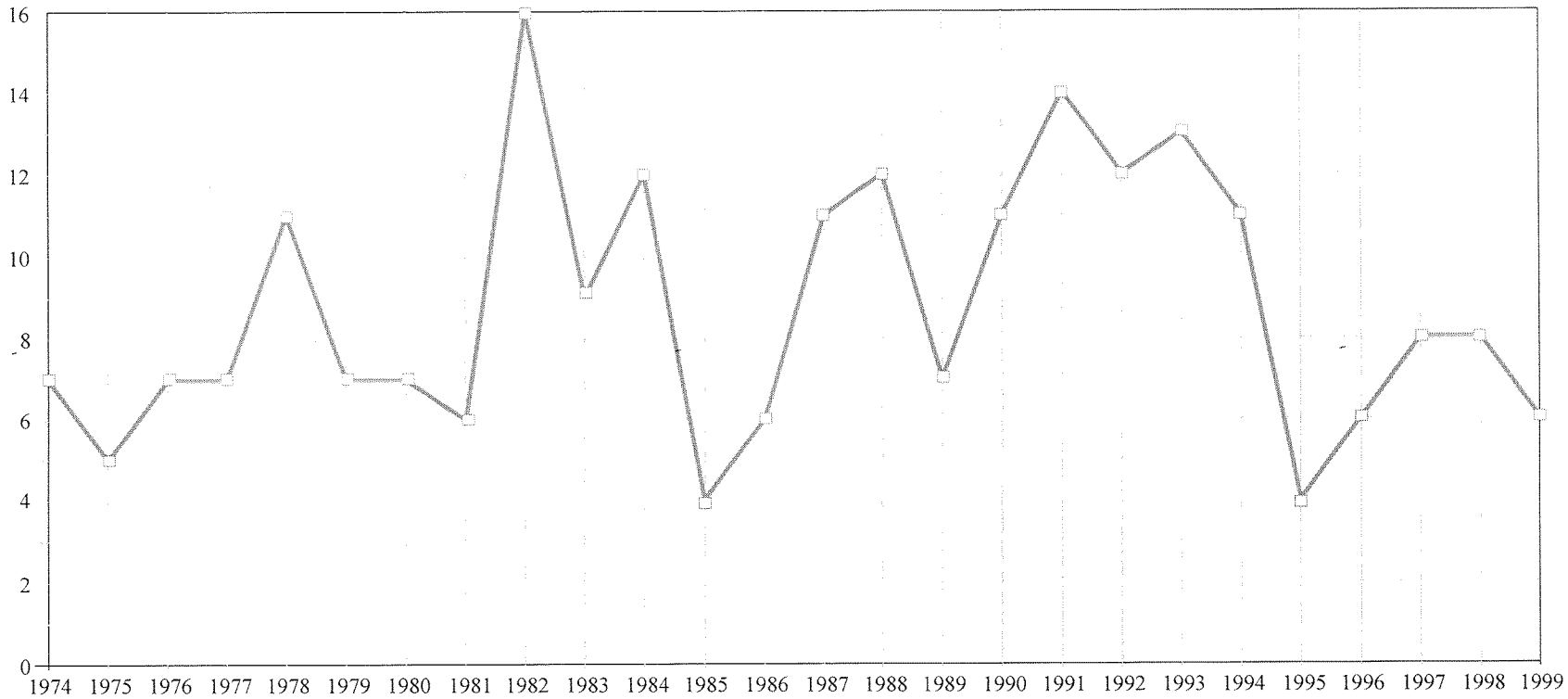
Appendix 10

Dr. Bortner Data

2001-2002

Exhibit 1. Arizona Death Sentences by Year, 1974–1999

(N = 227)*



*Three death sentences from January 1–July 1, 2000, included in the data set are not depicted here.

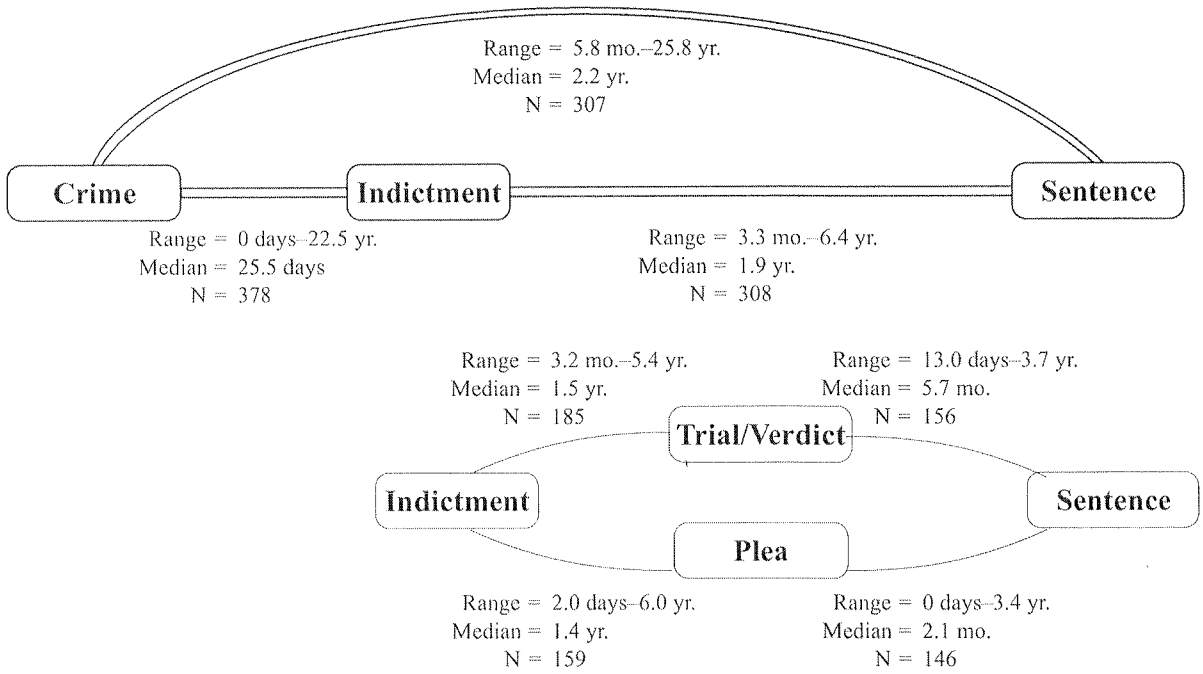
Exhibit 3. County Comparison: Processing of First-degree Murder Indictments, 1995–1999

	Maricopa County	Pima County	Outlying Counties	Arizona
First-degree Murder Indictments	N=524	N=313	N=134	N=971
Death Notice Cases	230	97	54	381
(% of First-degree Murder Indictments)	43.9%	31.0%	40.3%	39.2%
Death Notice Trials	106	57	32	195
(% of Death Notice Cases)	46.1%	58.8%	59.3%	51.2%
Death Notice Trials with Lesser Included Offense	13	9	5	27
Convictions[a] (% of Death Notice Trials)	12.3%	15.8%	15.6%	13.8%
Death Notice Trials with First-degree Murder	75	42	26	143
Convictions (% of Death Notice Trials)	70.8%	73.7%	81.3%	73.3%
Death Sentences after Trial	11	11	7	29
(% of Death Notice Cases with First-degree Murder Conviction after Trial)	14.7%	26.2%	26.9%	20.3%
Death Sentences after Plea Agreements	2	—	—	2
(% of Death Sentences)	15.4%			6.5%
No Death Notice Cases	294	216	80	590
(% of First-degree Murder Indictments)	56.1%	69.0%	59.7%	60.8%
No Death Notice Trials with First-degree Murder	47	42	14	103
Convictions (% No Death Notice Trials)	45.2%	41.2%	48.3%	43.8%
No Death Notice Trials with Lesser Included	35	37	11	83
Offense Convictions (% No Death Notice Trials)	33.7%	36.3%	37.9%	35.3%
Not Guilty All Indictment Counts	21	18	1	40
(% Indictments)	4.0%	5.8%	0.7%	4.1%

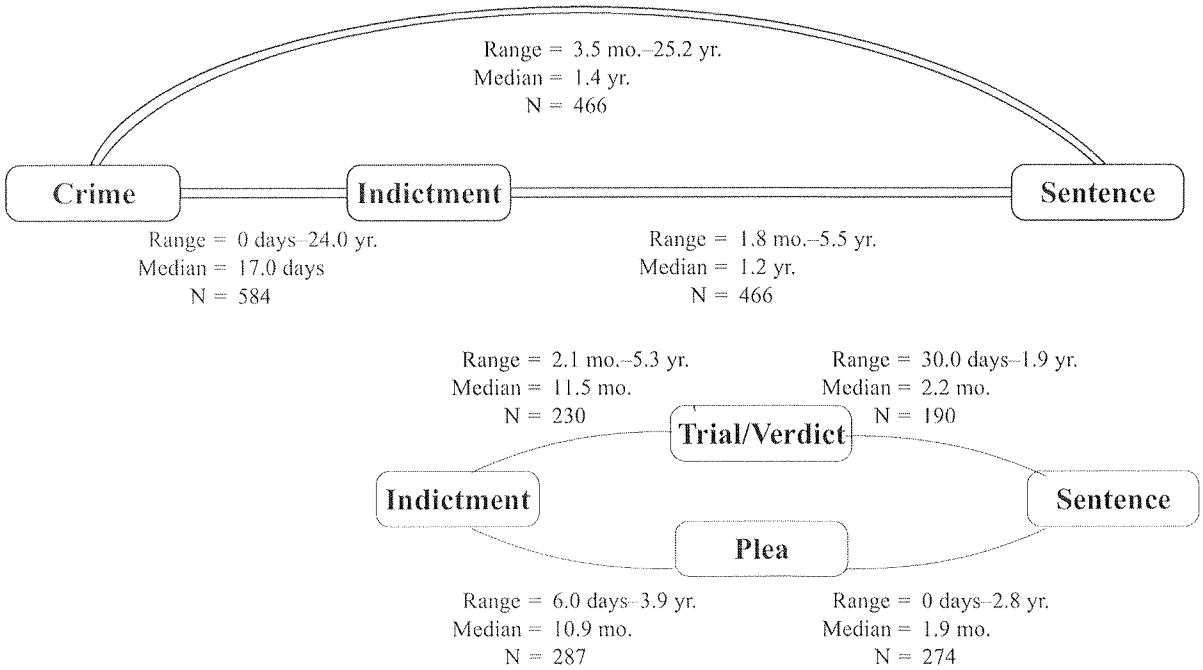
[a]These are convictions for second-degree murder, manslaughter, and negligent homicide.

Exhibit 12. Major Time Intervals for Arizona Death Notice Cases and No Death Notice Cases Resulting from First-degree Murder Indictments, 1995–1999

Death Notice Cases—Sentencing Process



No Death Notice Cases—Sentencing Process



The median is the middle value in the ranked distribution of values.
The range indicates the lowest to the highest values.

Exhibit 12. Remands, Reversals, and Modifications: Arizona Death Sentence Cases, 1974–July 1, 2000, 1974–1989, and 1990–July 1, 2000

	Conviction-related Remands and Reversals			Sentence-related Remands and Modifications			Total		
	1974–1989	1990–2000	1974–2000	1974–1989	1990–2000	1974–2000	1974–1989	1990–2000	1974–2000
Direct Appeal	23	16	39	33	16	49	56	32	88
Post-conviction Relief	4	7	11	11	4	15	15	11	26
Habeas	1	4	5	1	5	6	2	9	11
Solely *Watson*[a]	N/A	N/A	N/A	16	N/A	16	16	N/A	16
Total	28	27	55	61	25	86	89	52	141

[a]In *Lockett v. Ohio,* 438 Y.S. 586 (1978), the United States Supreme Court held that the Eighth and Fourteenth Amendments require that the sentencer not be precluded from considering as a mitigating factor, any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death. Applying *Lockett,* in *State v. Watson,* 120 Ariz. 441 (1978), the Arizona Supreme Court struck the portion of Arizona's death penalty statute that limited consideration of mitigating circumstances, and remanded the case to allow the defendant to present any mitigating circumstances tending to show why the death penalty should not be imposed.

Exhibit 13. County Comparison: Major Time Intervals for Processing of First-degree Murder Indictments, 1995–1999

	Maricopa County		Pima County		Outlying Counties	
	Range	Median	Range	Median	Range	Median
Death Notice						
Crime to indictment	3.0 days–22.5 yrs.	28.0 days	0 days–6.3 yrs.	20.0 days	6.0 days–8.4 yrs.	1.0 mo.
Indictment to plea	3.5 mos.–6.0 yrs.	1.8 yrs.	2 days–2.8 yrs.	8.2 mos.	28.0 days–4.0 yrs.	1.3 yrs.
Plea to sentence	15.0 days–3.4 yrs.	2.4 mos.	0 days–1.5 yrs.	2.3 mos.	0 days–7.2 mos.	1.2 mos.
Indictment to trial	7.9 mos.–3.9 yrs.	1.9 yrs.	3.2 mos.–3.0 yrs.	11.6 mos.	4.5 mos.–5.4 yrs.	1.5 yrs.
Verdict to sentence	15.0 days–3.7 yrs.	6.4 mos.	13.0 days–1.0 yr.	5.8 mos.	18.0 days–1.3 yrs.	5.3 mos.
Indictment to sentence	5.5 mos.–6.4 yrs.	2.2 yrs.	6.0 mos.–3.9 yrs.	1.3 yrs.	3.3 mos.–4.0 yrs.	1.8 yrs.
Crime to sentence	7.6 mos. 25.8 yrs.	2.5 yrs.	6.3 mos.–6.8 yrs.	1.7 yrs.	5.8 mos.–10.6 yrs.	1.9 yrs.
No Death Notice						
Crime to indictment	0 days–24.0 yrs.	19.0 days	0 days–17.6 yrs.	17.0 days	1.0 days–5.4 yrs.	14.0 days
Indictment to plea	1.7 mos.–3.9 yrs.	1.1 yrs.	14.0 days–3.1 yrs.	7.9 mos.	6.0 days–3.0 yrs	9.5 mos.
Plea to sentence	0 days–2.8 yrs.	2.1 mos.	0 days–2.0 yrs.	1.7 mos.	0 days–2.2 yrs.	1.4 mos.
Indictment to trial	2.1 mos.–4.5 yrs.	1.2 yrs.	2.7 mos.–2.5 yrs.	9.1 mos.	4.0 mos.–5.3 yrs.	9.9 mos.
Verdict to sentence	1.0 mos.–8.7 mos.	2.9 mos.	1.0 mos.–1.9 yrs.	1.9 mos.	1.1 mos.–4.2 mos.	1.9 mos.
Indictment to sentence	2.9 mos.–4.3 yrs.	1.5 yrs.	2.0 mos.–3.1 yrs.	11.4 mos.	1.8 mos.–5.5 yrs.	1.0 yrs.
Crime to sentence	5.1 mos. 25.2 yrs.	1.8 yrs.	4.9 mos.–8.9 yrs.	1.1 yrs.	3.5 mos.–5.6 yrs.	1.2 yrs.

Note: The range indicates the lowest to highest values. The median is the middle value in the ranked distribution of values and provides an "average" time. Extreme time intervals at the high end of the range reflect unusual circumstances, such as unapprehended suspects, extradition from another jurisdiction, or reindictments.

ARIZONA CAPITAL CASE OVERSIGHT COMMITTEE
PROPOSAL TO ESTABLISH A COMMITTEE ON THE MORE EFFECTIVE USE OF CAPITAL JURIES

The Arizona Capital Case Oversight Committee recommends as follows:

1. Twenty-five years ago, the Chief Justice of the Arizona Supreme Court established the Committee on the More Effective Use of Juries. The Committee was charged with studying civil and criminal jury trials, recommending improvements and means to accomplish them, suggesting training programs regarding the changes, and monitoring their implementation. (Admin. Order 93-20, Exhibit "A"). The Committee was comprised of social scientists, judges, lawyers and former jurors. The Committee's report, "The Power of Twelve," contained 55 recommendations, including a Jurors' Bill of Rights. Fifteen of the recommendations resulted in rule changes.
2. The Committee did not examine capital juries because, at that time, Arizona juries had no role in determining whether defendants convicted of capital murder were sentenced to life or death. Such sentencing decisions were made solely by judges. This changed radically with the decision in *Ring v. Arizona*, 536 U.S. 584 (2002), holding that the Sixth Amendment requires that juries decide aggravating factors. Arizona's death penalty statutes were amended so that if a jury convicts, it then decides whether an aggravator is proven. If so, each juror is burdened with the weightiest moral judgment that any person can face – whether another human being will be put to death. A.R.S. §§13-751, 13-752.
3. Capital trials are extraordinarily difficult for jurors even beyond this weighty judgment. Potential jurors are required to answer very personal questions in voir dire. Jurors are confronted with highly emotional evidence, including grieving family members and horrific photographs. They hear scientific testimony in the fields of psychiatry, neurology, toxicology, pediatrics and many others. They receive instructions that are complex and difficult to understand.
4. Voir dire practices in capital cases differ drastically from courtroom to courtroom.
5. The Capital Jury Project ("CJP") was initiated with National Science Foundation funding in 1990. Its work continues today. CJP researchers, primarily criminologists, social psychologists and law professors, conducted in-depth interviews with 1,198 people who served as jurors in capital trials in 14 states. Approximately half of the trials resulted in death verdicts and half resulted in life. The CJP found that a large percentage of the

jurors should have been stricken for cause or did not understand the instructions they received. The CJP did not include Arizona.

6. No comprehensive examination of capital juries comparable to the Committee on the More Effective Use of Juries has been conducted in Arizona. The Capital Case Oversight Committee urges the Chief Justice to appoint such a committee comprised of judges, lawyers, former capital jurors, and social scientists, including at least one CJP researcher and at least one linguist. (*See* Proposed Order, Exhibit "B".) This committee should study:
    a. The use and content of questionnaires to be filled out by potential capital jurors;
    b. The use of mini-opening statements in capital trials;
    c. More consistent and effective voir dire in capital trials;
    d. Whether the teachings of *Batson v. Kentucky*, 476 U.S. 79 (1986), and its progeny can be better met in capital trials;
    e. Whether capital jury instructions can be made clearer and more consistent without sacrificing their accuracy in communicating legal principles;
    f. Other measures (such as improved pretrial jury orientation, increased use of visual aids, reduction or elimination of lengthy breaks during trial) to improve jurors' performance of their duties;
    g. Means of eliminating unnecessary stress during and after jurors' performance of their duties; and
    h. Other related issues raised by or brought to the attention of committee members.

DATED this ___ day of _____, 2018.

_____
Ron Reinstein, Chair, Capital Case
Oversight Committee

Proposed One-Word Amendment to Rule 6.8 (e), Rules of Criminal Procedure

(e) Exceptions. In exceptional circumstances, a court may appoint an attorney who does not meet the qualifications set forth in this rule if:
(1) the Supreme Court consents;
(2) the attorney meets the requirements set forth in (a)(3)-(5);
(3) the attorney's experience, stature, and record establish that the attorney's ability significantly exceeds the standards set forth in this rule; and
(4) the attorney <u>MEANINGFULLY</u> associates with a lawyer who meets the qualifications set forth in this rule and the associating attorney is appointed by the court for this purpose.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
ESTABLISHMENT OF THE	)	Administrative Order
CAPITAL CASE OVERSIGHT	)	No. 2007 - 92
COMMITTEE	)	
	)	
	)	

The Supreme Court established the Capital Case Task Force on February 12, 2007 by Administrative Order No. 2007-18, to address the unprecedented number of capital cases then awaiting trial in Maricopa County. The Task Force reported its findings and recommendations to the Arizona Judicial Council on October 24, 2007. The number of capital cases that were pending in February has not diminished, despite the superior court's introduction of several promising improvements in capital case management, and despite the fact that Maricopa County government has begun to address some of the resource concerns related to capital case processing. The Task Force has recommended that the Supreme Court appoint an on-going committee to monitor capital caseload reduction efforts in Maricopa County.

In accordance with Arizona Code of Judicial Administration § 1-104, the chief justice may establish advisory committees to the Arizona Judicial Council to assist the Council in carrying out its responsibilities. Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Capital Case Oversight Committee is established as follows:

1. **Purpose.** The Committee, acting as an advisory committee to the Arizona Judicial Council, shall:

- Study and recommend measures to facilitate capital case reduction efforts,
- Make recommendations for adequate notice to the Supreme Court to assist the Court in making the necessary modifications to its staffing levels and judicial assignments to ensure the timely processing of appeals, and
- Develop recommendations for any formal policies deemed necessary.

2. **Membership.** The initial membership is attached as Appendix A. The chief justice may appoint additional members as needed or desired. Terms of the Committee members shall expire on December 31, 2008.

3. **Meetings.** At the discretion of the Committee chair, meetings may be scheduled, canceled, or moved. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202.

4. **Reports.** The Presiding Judge in Maricopa County and the Committee shall each submit a progress report to the Arizona Judicial Council in December 2008.

5. **Administrative Support.** The Administrative Office of the Courts shall provide administrative support and staff for the Committee, who may, as feasible, conduct or coordinate research as requested by the Committee.

Dated this 6th day of December, 2007.

_____

RUTH V. McGREGOR
Chief Justice

Attachment: Appendix A

Appendix A

Capital Case Oversight Committee

Membership

Hon. Michael D. Ryan, Chair
Arizona Supreme Court

Hon. Anna Baca
Presiding Criminal Judge
Superior Court in Maricopa County

Phil J. MacDonnell
Chief Deputy
Maricopa County Attorney

Kent Cattani
Chief Counsel, Capital Litigation
Arizona Attorney General

Donna Hallam
Staff Attorney
Arizona Supreme Court

Dan Levey
Advisor to the Governor for Victims

Marty Lieberman
Director, Arizona State Capital
Post-Conviction Defender's Office

James Logan
Director, Maricopa County
Office of Public Defender Services

Paul Prato
Attorney Manager
Maricopa Public Defender

Ronald Reinstein
Retired Judge
Superior Court in Maricopa County

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:	)	
	)	
EXTENSION OF THE TERM OF THE CAPITAL CASE OVERSIGHT COMMITTEE	)	Administrative Order No. 2016 - 11 (Amending Administrative Order No. 2013-115)
	)	

On December 6, 2007, this Court entered Administrative Order No. 2007-92, which established the Capital Case Oversight Committee. The purposes of this advisory committee included monitoring and facilitating efforts to reduce the number of capital cases in the Maricopa County Superior Court, which had reached a crisis level in 2007, and making policy recommendations to improve the judicial administration of capital cases in Arizona.

On December 18, 2013, this Court entered Administrative Order No. 2013-115, which extended the term of the Capital Case Oversight Committee to December 31, 2015.

The December 2015 Report of the Oversight Committee recommended an extension of the Committee's term, and that it continue to monitor capital case data. Therefore, after due consideration of the Oversight Committee's request and pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the term of the Capital Case Oversight Committee is extended from December 31, 2015 to December 31, 2018, as follows:

1. **Purpose.** The Oversight Committee shall continue to identify issues affecting the administration of capital cases and to propose recommendations to improve the judicial administration of these cases.

2. **Membership.** The Committee members are set forth in Appendix A. Terms of Committee members shall expire on December 31, 2018.

3. **Meetings.** The Oversight Committee shall meet only as necessary, and meetings may be scheduled, cancelled, or moved at the discretion of the Committee chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202.

4. **Reports.** The Committee shall submit progress reports to the Arizona Judicial Council in October 2017 and December 2018.

5. **Administrative Support.** The Administrative Office of the Courts shall provide administrative support and staff for the Committee, who may, as feasible, conduct or coordinate research as requested by the Committee.

Dated this 24th day of February, 2016

_____
SCOTT BALES
Chief Justice

Appendix A

Members of the Capital Case Oversight Committee

Hon. Ronald Reinstein (ret.), Chair
Arizona Supreme Court Special Projects

Hon Kent Cattani
Court of Appeals, Division One

Ms. Donna Hallam
Arizona Supreme Court Staff Attorney

Ms. Lacey Stover Gard or the Capital Litigation Section Chief
Office of the Arizona Attorney General

Ms. Kellie Johnson
Pima County Attorney's Office

Ms. Michele Lawson
Maricopa County Office of the Public Advocate

Mr. Dan Levey
Parents of Murdered Children

Mr. Martin Lieberman
Maricopa County Legal Defender

Mr. James Logan
Maricopa Office of Public Defense Services

Mr. William Montgomery
Maricopa County Attorney

Hon. Samuel Myers or the presiding criminal judge of the
Superior Court of Maricopa County

Mr. Daniel Patterson
Office of the Maricopa Legal Advocate

Mr. David Rodriquez
Pinal County Attorney's Office

Mr. Natman Schaye
Arizona Capital Representation Project