

The High Price of a Death Penalty Defense

Lake County, state have spent combined \$2.7M defending death penalty defendants since 1990

BY ANDY GRIMM; agrimm@post-trib.com



A death sentence is the ultimate penalty, reserved for the worst defendants accused of the most heinous crimes. And it isn't cheap. The Lake County Public Defender's Office has asked to add \$200,000 to its budget this year for expert witnesses and attorneys to defend Kevin Isom, a Gary man who faces the death penalty in the murder of his wife and her two teenage children in 2008, as well as two cases in which prosecutors are seeking the lesser sentence of life without parole.

Last week, Isom's attorneys asked the court for approval to hire defense experts who charge \$80 to \$100 an hour, and might log 1,000 hours over the course of the trial that

will determine his guilt and the penalty phase that follows to determine whether he is to be executed.

It's a cost county officials can't deny, even as the county budget shrinks. When authorizing defense attorneys for Isom to hire experts, Lake County Judge Thomas Stefaniak lamented that county employees already face layoffs in 2010 as the county struggles to close a \$17 million shortfall.

"Legally we are bound to do whatever we need to do," said Lake County public defender David Schneider. "If, God forbid, your loved one were standing trial in a death penalty case, that's what you would want."

"We're not going to skimp to defend our clients."

The state and county have jointly funded the defense of death penalty cases since the early 1990s, when the state Supreme Court mandated higher standards for attorneys in capital cases after a wave of successful appeals in the 1980s — with nearly every case challenged successfully on grounds of ineffective assistance from appointed counsel.

The more expensive defense teams — and requirements for detailed psychological examinations of capital defendants — have meant far fewer executions in Indiana.

Statewide, no one has been put to death in more than two years, the longest span without an execution in 15 years. No Northwest Indiana capital defendant has been executed since 1985 when Hammond killer William Vandiver died in the electric chair.

"Every time we have a death penalty case, the county spends a million dollars with the defense and prosecutors and the appeals," said Lake County Council President Larry Blanchard, who has presided over a series of contentious county budget cuts this year.

"And no one is ever executed. It makes you question whether it's worth the cost."

Get it right the first time

The death penalty has long been under fire. Credible studies draw no correlation between states that have the death penalty and reductions in violent crime. Numerous analyses have

shown racial bias in the distribution of death sentences. Most damaging is the specter that innocent defendants might be executed, as DNA evidence has exonerated a number of men sentenced to death.

After the death penalty was reinstated in 1977, about three of four death penalty cases filed were eventually reversed on appeal, said Larry Landis, executive director of the Indiana Public Defender Council. Most of those cases were overturned because defense attorneys made crucial errors, often because of inexperience, or the defense was underfunded.

“Whatever you say about the cost of defending these cases now, taking a case through the state appeals and federal court is not cheap either,” said David Vandercoy, a Valparaiso University law school professor and criminal defense attorney. “The court seemed to think the thing to do was to get it right the first time.”

The state Supreme Court in 1989 adopted Criminal Rule 24, which mandated experience levels and training for lawyers in capital cases and allowed the state to pay half the cost of the defense.

Since 1990, Lake County and the state have combined to spend more than \$2.7 million defending 16 defendants in death penalty cases — \$168,000 per case. Lake County rivals only Marion County in the number of death penalty cases filed, and the amount spent defending them.

‘Nobody is getting rich here’

Lake County taxpayers and state funds combined to pay the \$600,000 tab to defend Edward Earl Williams — enough to cover the \$54-per-day cost to keep him in prison for 30 years. Williams was charged with the 1992 murder of three people during an armed robbery and home invasion, and pled guilty to lesser charges after multiple appeals and received a 120-year sentence.

This year, public defender Schneider has requested adding \$200,000 to his budget in anticipation of expenses from defending Isom, and life-without-parole cases in some high-profile homicides— notably Engelica Castillo and her boyfriend. Timothy Tkachik, charged with the murder of 2-year-old Jada Justice.

No one is getting rich from handling death penalty cases. The state sets the hourly rate for defense attorneys at \$100, about one-third of what a highly qualified criminal attorney would make on a routine felony case.

The state requires special training and experience for attorneys in capital cases, and indigent defendants in capital cases — “that would be nearly everyone charged in a death penalty case,” said Schneider — are assigned two attorneys. Isom is a rare case where a capital defendant hired his own lawyer, though his private attorneys have asked the court for money to hire experts that will charge \$80 or more an hour.

“Believe me, nobody is getting rich here,” said Nick Thiros, who said he took on Isom’s case because a family friend asked him to help.

The number of executions is on the decline nationwide, falling from 326 in 1995 to 115 in 2007, according to the Department of Justice. Key factors are that states have eliminated the death penalty, or placed limitations on when it can be pursued. Perhaps more importantly, a sentence of life in prison without parole now is available to prosecutors.

What victims’ families want

Porter County Prosecutor Brian Gensel said the expense of seeking the death penalty is a factor, but that the prolonged effort of seeing a case through a two-phase trial and seemingly endless appeals is often more important.

In 1996, Gensel reached a plea deal with Eugene V. Britt in the murder of an 8-year-old Portage girl, with Britt sentenced to life without parole.

“The family wanted closure. They did not want to be going to hearings and seeing his name in the paper for 10 years,” Gensel said.

The same year, Lake County Prosecutor Bernard Carter charged Britt with six murders there and sought the death penalty.

Carter said Britt confessed to 11 killings in Lake County. Victims’ families were aware of the time required and supported pursuing the death penalty against Britt, Carter said.

“If you’ve got a guy who’s killed 11 people, and confessed to it, if that’s not a death penalty case, I don’t know what is,” he said. “We consulted with all the families, and all of them wanted to see (Britt) executed.”

Britt eventually was sentenced to 245 years in prison, after Lake County Judge Salvador Vasquez ruled Britt was ineligible for the death penalty because he was mentally retarded.

Defending Britt against the death penalty charges took 11 years in trial and appeals, and cost the Public Defenders Office \$403,000.

How many errors acceptable?

Timothy Yaros’ family wanted to see Rufus Averhart put to death for gunning down Yaros’ father, Gary police officer George Yaros, during a 1981 robbery.

The case dragged on through three appeals and nearly three decades, and Timothy Yaros was told by prosecutors Averhart stood a 50-50 chance of acquittal in a third retrial, mostly because so many of the witnesses against him had died. Averhart pleaded guilty to lesser charges. His defense cost taxpayers \$521,000.

“He’s entitled to a good defense, I know, but how many appeals does he get? Yaros said. “I respect what the prosecutors did, but I still wish (Averhart) was dead.”

Carter said he sometimes is pressured to avoid seeking the death penalty because of the immense costs of the publicly funded defense, but Larry Landis of the Indiana Public Defender Commission said the leveling of the playing field in capital cases has made prosecutors less likely to push for executions.

“For a long time, there were no standards for the defense, lawyers were overworked, they couldn’t bring experts in” Landis said. “These things made a difference in the kind of defense capital cases got, and the reversals (of trials in the 1970s and 1980s) showed that.”

In 1978, Larry Hicks was convicted in a capital murder case for allegedly stabbing another man to death in a fight at a party in Gary. Hicks, with no prior criminal record and none of the aggravating factors now required by the court, would likely never have been a death penalty case after 1990.

Instead, he was convicted and spent two years on death row before he was acquitted in a second trial after his lawyers pointed out serious flaws with his defense.

In his second trial, the alleged murder weapon found at Hicks’ home was too large to have inflicted the wounds; police reports indicated the killing took place more than four hours after Hicks left the party; “blood stains” found on Hicks’ pants were, upon forensic examination, rust.

Those sorts of errors were common in capital cases until the early 1990s; they remained common in other states where standards are not as high, Landis said.

“If you’re going to kill someone, you want to make damn sure they’re guilty. You can do it on the cheap, but there’s a high chance you’re going to convict innocent people,” Landis said.

“What’s an acceptable error rate?”