



What makes the death penalty so expensive?

The average cost of a Texas death penalty case is \$2.3 million vs. \$750,000 for life in prison.
– *Dallas Morning News*, 1992

The high cost of the death penalty begins with the original trial.

- Jury selection in death penalty cases can take up to one month or longer, as all prospective jurors must be questioned about their views on the death penalty and be willing to impose it. By contrast, jury selection for a non-death penalty capital murder trial can be completed in a couple of days.
- The judge is legally bound to appoint a second attorney to assist in the defense.
- Death penalty trials are also longer because of the separate sentencing phase, which does not take place in non-death penalty cases.
- Capital defendants have the option of presenting mitigating information that often would not be presented in a non-death penalty trial. This information may include expert testimony, which takes time and can be quite expensive.
- If defense attorneys do not spend the money to hire adequate experts in the initial trial, it is more likely that the case will be sent back to the trial court on appeal (and cost the county yet more money).

The high cost continues with the appeals process.

- The appeals process is automatic, and a judge must appoint attorneys for both a direct appeal and state writ of habeas corpus.
- Once all state appeals have been exhausted, the attorney will ask a U.S. district judge to appoint another attorney to handle the federal writ.

Expenses also include:

- A separate housing facility for death row inmates at \$61.58 per inmate per day [1];
- The cost of the actual execution.

Who pays for the death penalty in Texas?

- Each county pays for its own trials and the state appeals process. Oftentimes, smaller or poorer counties cannot afford to seek the death penalty. *135 of Texas' 254 counties have never sent a single offender to death row.*
- Because state tax dollars pay for the federal habeas corpus process, every Texas resident is contributing to the enormous costs of death penalty appeals.
- Small counties that cannot afford to seek the death penalty themselves subsidize the counties that seek it more often. That means that the tax dollars of Texans in the counties that cannot afford to try death penalty cases are subsidizing the “wealthier” counties that are seeking the death penalty.

In 2009, Gray County spent nearly \$1 million in its pursuit of the death penalty for Levi King. His case, which was moved to Lubbock County, consisted only of a punishment hearing that resulted in a sentence of life in prison without the possibility of parole. The cost to Gray County for seeking a death sentence for Levi King was a contributing factor in the county commission's decision to withhold employee raises and increase tax rates. King was already serving two consecutive life sentences in Missouri and had pled guilty to the murders of three Texans.

What does the cost of a death penalty trial look like on the county level?

Gray/Lubbock County (2009):

Levi King was spared a sentence of death in Lubbock County by a single vote on October 8, 2009. King had pled guilty to the murders of three family members in Gray County in 2005; he was already serving two consecutive life sentences in the state of Missouri for murder. The trial had been moved from Gray County to Lubbock County due in part to pre-trial publicity. According to the jury foreman in the King trial, a single juror voted against the death penalty because she could not definitively say that there was no evidence that warranted sparing his life. According to reports, several other jurors also struggled as they weighed the mitigating circumstances that the defense had presented.

It took nearly two months to pick the jury in this case. The preliminary costs for the defense of Levi King amounted to almost \$750,000, a tenth of the fiscal budget for rural Gray County. The cost incurred was just for the punishment phase of the trial; it does not include attorneys' fees or a potential bill from Lubbock County, where the trial took place. The District Attorney's Office spent \$88,000 to prosecute King. That figure also is expected to increase.

According to Joe Marr Wilson, one of the attorneys appointed to represent King, the same result of life without parole could have been achieved for \$10,000 if prosecutors had not tried King in Texas. The cost to Gray County for seeking a death sentence for Levi King was a contributing factor in the county commission's decision to withhold employee raises and increase tax rates. [2]

Austin County (2009):

In Bellville, four men were indicted for the murder of a prominent Houston physician during a botched attempt to kidnap his pregnant wife. The three-man District Attorney office, which typically handles a dozen trials a year and has not sought the death penalty in more than two decades, could be prosecuting four death penalty cases, each of which could cost the county hundreds of thousands of dollars. If the district attorney elects to seek the death penalty for all four defendants, who are most likely indigent, the county will be obliged to provide each with two lawyers. [3]

Shelby County (2008):

In 2008, the Shelby County (population 30,000) District Attorney had to decide whether to seek the death penalty for a defendant who was accused of three separate murders, of which he had already confessed to two. The DA told the local newspaper that the defendant deserved the death penalty but she ultimately agreed to a life sentence plea bargain because of "limited resources for a death penalty prosecution." [4]

El Paso (2008):

The resentencing trial of David Renteria cost El Paso County taxpayers \$235,254. This included the cost of juror lodging and meals, overtime pay for court staff, the fee for investigators, and witness travel. [5]

Jasper County (1998):

Jasper County spent upward of \$1.5 million in the trials of three white men indicted in the 1998 dragging death of James Byrd Jr. Byrd, who was black, was dragged three miles behind the men's truck in what prosecutors successfully argued was a hate crime. Even though the U.S. Department of Justice provided about \$100,000 in assistance, county commissioners still had to raise taxes to cover costs; property taxes were increased 6.7% over two years. One defendant received a life sentence; the other two received the death penalty.

End notes:

[1] \$61.58 per day for Texas death row inmate (Texas Department of Criminal Justice, 2002) vs. average cost to house an inmate in Texas prisons \$47.50 per day (TDCJ, 2009).

[2] *The Lubbock Avalanche-Journal*, October 20, 2009

[3] Allan Turner, "Can Austin County Afford 4 capital cases? Decision still pending on whether to seek death in Bellville slaying, a costly prospect", *Houston Chronicle*, Oct. 4, 2009.

[4] Matthew Stoff, "After Confession Smith Sentenced to Three Life Terms", *The Daily Sentinel*, Apr. 3, 2008.

[5] *El Paso Times*, June 23, 2008

Other Sources:

"Death penalty cases more expensive than lifetime imprisonment, but local CDA says cost never a consideration"

By Logan Carver, *The Lubbock Avalanche-Journal*, Sunday, December 13, 2009,

http://www.lubbockonline.com/stories/121309/loc_535156806.shtml

Adam Gershowitz, Associate Professor of Law. Testimony presented before the Capital Punishment Subcommittee of the Texas House of Representatives, February, 2009.