



The Cost of the Death Penalty

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

With inflation, the average cost of a death penalty case in 2014 was \$3.8 million vs. \$1.3 million for life in prison. – Law Office of Texas Defense Attorney Fred Dahr, 2015

What makes the death penalty so expensive?

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. [1]
- 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. Harris County pays \$75 an hour for mitigation specialists. [2]
- If defense attorneys do not allocate resources 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 [3];
- The cost of the actual execution, including \$1,500 for each dose of compounded pentobarbital. [4]

“It has been established conclusively in study after study, in states that have little in common with each other—different cultures, different histories and traditions, different demographic profiles, different attitudes—applying every imaginable approach and parameter to very different law enforcement cultures—that it costs less to lock up a young [defendant] for the balance of his natural life than it does to execute him.”

Sam Millsap,
Former Bexar County
District Attorney

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. This means that the tax dollars of Texans in counties that cannot afford to try death penalty cases are subsidizing the “wealthier” counties that are seeking the death penalty.
- Since 1992, 240 people accused of committing serious crimes have been exonerated. The State of Texas has paid over \$65 million in compensation to those wrongfully convicted. [5]

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

Brazos County

Gabriel Hall was 18 when he was arrested for the attack of a College Station couple in 2011. He was sentenced to death four years later. The trial was delayed numerous times due to extensive DNA testing and investigating witnesses in Hall's native country of the Philippines. These unique factors costs Brazos County both time and money.

Marc Hamlin, Brazos County District Clerk, estimated Hall's trial cost close to \$2 million with the appeals process costing an additional \$200,000. Seating the jury cost the county more than \$18,340. The defense spent approximately \$852,000, while Brazos County District Attorney Jarvis Parsons claims his costs barely top \$80,000, although he does not include four years' worth of staff time in his estimates. [6,7]

Calhoun County

Like many other small counties, Calhoun County does not regularly seek the death penalty. In fact, its last death penalty trial was in the 1970s. As a result of this, Calhoun County decreased its budget for indigent defense. In 2014, Jonathan Camacho was charged with one count of murder and three counts of capital murder. Before his trial began, many in the county worried about what it would cost to pursue the death penalty.

In November 2015, Camacho plead guilty in exchange for life without parole. District Attorney, Dan Heard, said Camacho's defense had already cost the county thousands of dollars. He estimated a trial seeking the death penalty would have cost at least \$1 million. [8]

Midland County

In October of 2014, Dan Higgins was charged with the murder of Midland County Deputy, Mike Naylor. Midland County District Attorney, Teresa Clingman, was eager to pursue the death penalty. The victim's widow, Denise Naylor, asked the county instead to pursue a life sentence to avoid costly litigation. When discussing this case, former warden and current professor, Keith Price, noted that capital litigation in Texas can cost an estimated \$3 million more than non-capital. [9]

McLennan County

In 2012, Ricky Donnell Cummings was sentenced to death for his role in the murder of two men. During his trial, court-appointed attorneys gathered research and expert testimony from Michael “Cell Tower Mike” O’Kelley. Throughout the 12-day trial, O’Kelley never took the stand, yet McLennan County paid the cellphone and cell tower analyst \$102,994. Cummings is currently seeking a new trial, citing inadequate defense. [10]

Randall County

Brittany Holberg was convicted of capital murder in 1998. Eighteen years later, she is still on death row pursuing appeals. Randall County District Attorney, James Farren, said the cost has been enormous. Because of the Holberg case, he will no longer seek the death penalty in capital cases. The time and expense are too costly for the “taxpayers of this county and I do not want to subject them to this kind of thing any longer,” Farren said. [11]

Gray County

Levi King was spared a sentence of death by the vote of a single juror on October 8, 2009. King had pled guilty to murdering three people in Gray County in 2005; he was already serving two consecutive life sentences in the state of Missouri for murder. The trial was moved from Gray County to Lubbock County due in part to pre-trial publicity.

The preliminary costs for the defense of Levi King amounted to almost \$750,000, a tenth of the fiscal budget for rural Gray County. 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. [12]

Shelby County

In 2008, the Shelby County 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" in a county with a population of 30,000. [13]

El Paso

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. [14]

End notes:

[1] Chammah, Maurice. "Six Reasons the Death Penalty is Becoming More Expensive." *The Marshall Project*. December 17, 2014.

[2] *ibid*.

[3] \$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).

[4] Associated Press in Houston. "Execution drugs quadruple for Texas prisons." *The Guardian*. August 15, 2014.

[5] Ward, Mike. "Tab for wrongful convictions in Texas: \$65 million and counting." *Austin American-Statesman*. February 10, 2013.

[6] Falls, Clay. "Gabriel Hall Trial, Other Death Penalty Cases Delayed Due To DNA Testing Law." *KBTX-Bryan/College Station*. July 2, 2015.

[7] Falls, Clay. "Gabriel Hall Trial Comes at High Cost to Brazos County." *KBTX-Bryan/College Station*. October 8, 2015.

[8] Priest, Jessica. "Calhoun County budget may be affected by death penalty case." *Victoria Advocate*. February 11, 2015.

[9] Sullivan, Pat. "Higgins case follows recent trend." *Midland Reporter-Telegram*. March 1, 2015.

[10] Witherspoon, Tommy. "Death row inmate Cummings seeks new trial." *Waco Tribune*. June 22, 2015.

[11] Kanelis, John. "Holberg Capital Case Still Causing Headaches." *News Channel 10-KFDA*. 21 Dec. 2015.

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

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

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

Other Sources:

"What Texas Could Have Bought with 2014 Death Penalty Costs." Law Office of Texas Defense Attorney Fred Dahr, November 17, 2015.

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