23 June 2025

The Declining Use of the Death Penalty in the State of Texas

Abstract

This article looks at the evolution of capital punishment in Texas from 1982 to 2024, focusing on the state's disproportionate use of the death penalty and its systemic flaws. Despite executing 591 people during this period - nearly five times more than any other state - Texas has demonstrated significant issues with wrongful convictions, accounting for 13.4% of national exonerations while representing only 9.1% of the U.S. population. It analyzes the declining trend in death sentences after 1999, attributing this change to growing awareness of wrongful convictions, increasing costs of capital trials, and the introduction of life without parole as an alternative sentence in 2005. The article also explores how public opinion, religious positions, and conservative perspectives may have influenced the state's approach to capital punishment.

Keywords

Death penalty, Texas criminal justice, wrongful convictions, exonerations, capital punishment costs, judicial system, life without parole, public opinion, executions, Timothy Cole Act.

Introduction

In 1972, the U.S. Supreme Court ruled that the death penalty, as it was being applied, was arbitrary and capricious, thereby violating the Constitution. This decision effectively halted the use of capital punishment nationwide. Four years later, on July 2, 1976, the Court authorized its reinstatement in *Gregg v. Georgia*. Texas resumed executions in 1982 and, as of 2024, has executed 591 individuals - nearly five times more than Oklahoma, the state with the second-highest number, which carried out 127 executions during the same period.

Given that the death penalty represents the ultimate, irreversible punishment, one would expect Texas, as the national leader in executions, to maintain an exceptionally reliable judicial system that safeguards against wrongful convictions. However, the data suggests otherwise.

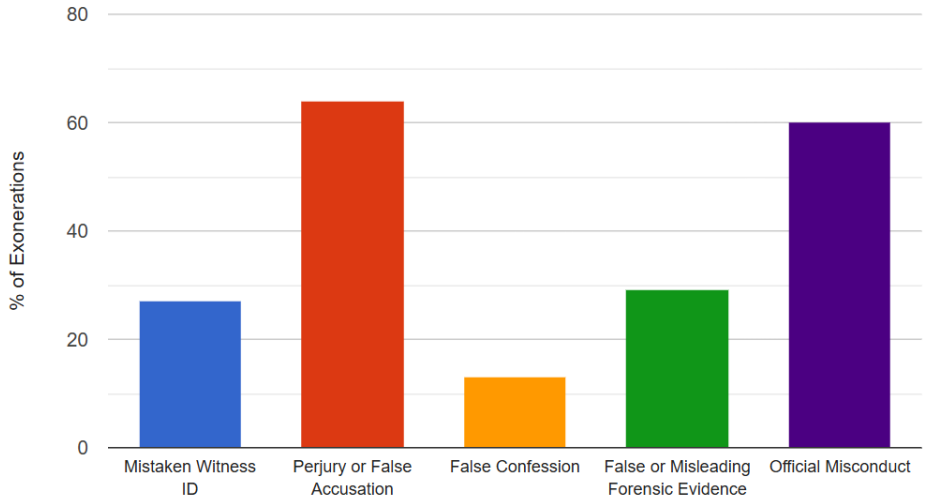
The University of Michigan created a national database to monitor exonerations across the United States, documenting cases in which judicial sentences - including death sentences - were later proven wrongful and overturned on appeal. Many of those exonerated had spent years or even decades in prison, before their innocence was established.

Since the database's inception in 1989 through the end of 2024, Texas alone has recorded 491 wrongful incarcerations for both ordinary and capital crimes, averaging 14 per year. This is particularly concerning when viewed in a national context: although Texas comprises just 9.1% of the U.S. population, it accounts for 13.4% of all documented wrongful convictions - a disproportionately high figure that raises significant concerns about the state’s judicial system. These figures do not capture the full extent of wrongful convictions - some innocent individuals

lack the resources or competent legal representation necessary to overturn their sentences, remaining wrongfully incarcerated without ever being exonerated.

exonerations **for all crimes** (including death penalty) from 1989 to 2024 [1]		
	number	%
United States	3649	100.0%
US State of Texas	**491**	**13.4%**

The graph below illustrates the primary causes of wrongful convictions. In most cases, multiple factors are involved, so their percentages cannot simply be added together. Perjury or false accusations play a role in over 60% of cases, while misconduct by prosecutors, judges, or police occurs at nearly the same rate. Many of these factors are not merely mistakes but indications of systemic bias, injustice, or incompetence.



The figures above encompass all crimes, not just those related to the death penalty, but they serve as a significant indicator of the reliability of the judicial system in a state where capital punishment is enforced.

Focusing specifically on the death penalty, between 1976 and 2024, 18 wrongful death sentences were overturned in Texas, leading to the release of them from the death row.

Kerry Max Cook is one of those eighteen cases. On June 19, 2024, 46 years after his original conviction to death, the Texas Court of Criminal Appeals declared him to be factually innocent of the rape and murder of Linda Jo Edwards in the city of Tyler in 1977. In the majority opinion

[1] https://www.law.umich.edu/special/exoneration/Pages/about.aspx

of the Court exonerating Max Cook, Judge Bert Richardson hold that "*the State resorted to improper means to achieve conviction, inexplicably and selectively destroyed evidence*" and that "*Several actions of the State go beyond gross negligence and reach into the realm of intentional deception against the tribunal.*" [2] Max Cook filed a federal civil rights lawsuit in November 2024 against the city of Tyler, Smith County and 15 law enforcement officials [3]. In an interview with CBS19 Cook said *" I get to expose the lies, the things that cause me to be wrongly convicted and close to being executed. And so the civil suit is really important. It's about accountability and justice for Linda Jo Edwards. It's been a costly fight nearly five decades but I refuse to give up."*[4]

In addition to the 18 exonerations from death row, there are cases where individuals sentenced to death were executed despite compelling evidence of their innocence. Of the 21 documented instances of presumed wrongful executions in the U.S., 10 occurred in Texas - accounting for **47% of all such cases nationwide**. The total number of innocent prisoners executed is likely to be much higher. The exact number is impossible to determine because investigations of claims of innocence normally stop with the execution.

Presumed wrongful executions from 1976 to 2024

	number	%
United States	21	100%
US State of Texas	**10**	**47%**

Larry Swearingen, is one of those executions in Texas in August 2019, "*despite significant flaws with virtually every piece of forensic evidence in his case and strong evidence that it was physically impossible for him to have committed the crime.*"[5] Before is execution, Swearingen told The Washington Post that "Texas murdered an innocent man," and he hoped his death "can be a catalyst to change the insane legal system of Texas which could allow this to happen."[6]

Robert Roberson, is a new potential wrongful execution in Texas. He was sentenced to death in 2003 in Texas, for the alleged murder of his two-year-old daughter, Nikki Curtis. Prosecutors claimed she died from **Shaken Baby Syndrome (SBS),** a diagnosis widely accepted at the time but now increasingly questioned by medical experts.

Modern research has cast doubt on SBS as a clear-cut indicator of abuse, as its symptoms - brain swelling, internal bleeding, and retinal hemorrhages - can also result from natural medical conditions, infections, accidental falls, or other trauma. Critics note the absence of external injuries consistent with violent shaking, raising concerns that Roberson's conviction was based on assumptions rather than definitive evidence.

[2] https://casetext.com/case/ex-parte-cook-2021
[3] https://www.loevy.com/exonerated-after-47-years-kerry-max-cook-files-federal-lawsuit-in-texas/
[4] Kerry Max Cook, who was exonerated for 1977 Tyler murder, talks lawsuit against city, county
[5] https://deathpenaltyinfo.org/policy-issues/policy/innocence/executed-but-possibly-innocent#larry_swearingen
[6] https://www.texastribune.org/2019/08/21/larry-swearingen-execution-texas/

Roberson has consistently maintained his innocence, attributing his daughter's death to medical complications, including pneumonia that may have led to sepsis. He also stated that Nikki fell from her bed - a plausible cause of serious brain injury in young children. Some experts believe her symptoms align with such an accident.

His case has become a focal point in the debate over flawed forensic science in criminal prosecutions. Despite mounting concerns, attempts to overturn his conviction have failed. In October 2024, the Texas Supreme Court granted a temporary stay of execution to review the case, only to vacate it a month later, allowing the state to set a new execution date.

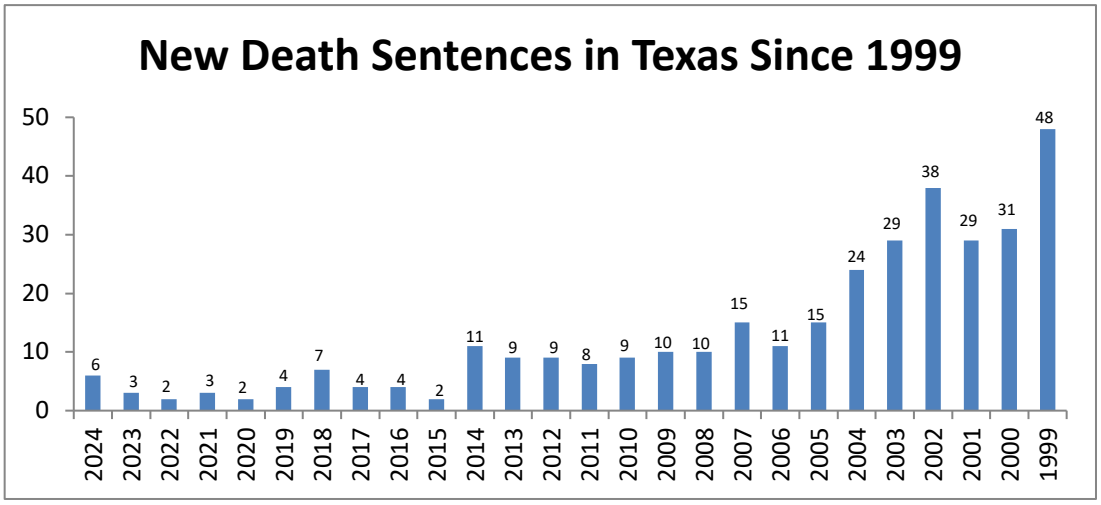
Roberson's case has drawn support from nearly 90 Texas state lawmakers across party lines and author John Grisham [7], who argue his conviction was based on outdated science. They have called for clemency or a new trial, warning of a possible miscarriage of justice.

In February 2025, Roberson filed a new appeal with the Texas Court of Criminal Appeals, presenting fresh expert opinions and scientific developments that challenge the reliability of the shaken baby syndrome diagnosis used in his case.

As of May 2025, Roberson remains on death row. If executed, he could be yet another innocent person put to death - not for a crime, but for a tragic accident misinterpreted as murder.

The decline on the use of the death penalty in Texas

After the reinstatement of capital punishment in the United States in 1976, Texas has been the most prolific state in carrying out executions. The use of the death penalty peaked in 1999 but has steadily declined since then. This downward trend is especially evident in the number of death sentences issued over time. In 1999, 48 death sentences were handed down, but by 2004, that number had dropped by 50% to 24. The decline continued over the next decade, with an annual average of 10.7 sentences from 2005 to 2014. The trend became even more pronounced in the most recent decade, with an average of only 3.7 sentences per year from 2015 to 2024.



[7] https://www.newser.com/story/357856/john-grisham-texas-may-kill-an-innocent-man.html

A key factor in the decline of the death penalty in Texas has been the growing awareness of wrongful sentences to death, which has significantly eroded public support for capital punishment. Since 1976, at least 18 individuals have been exonerated after being wrongly convicted of capital crimes, while another 10 were executed despite serious doubts about their guilt. The harsh reality that innocent lives have been - and continue to be - lost due to systemic flaws in the justice system has intensified public skepticism about the reliability and ethics of the death penalty.

A 2019 Gallup poll highlighted a shift in public opinion, showing that 60% of Americans preferred life imprisonment without parole for capital cases, while only 36% favored the death penalty [8]. Unfortunately, Gallup has not repeated this specific question in later polls. Instead, it conducts an annual survey asking only whether respondents support the death penalty (yes or no), without offering an alternative punishment. These oversimplified surveys create a misleading picture of public sentiment, as they favor the only explicitly stated option - the death penalty.

Gallup survey

Question: If you could choose between the following two approaches, which do you think is the better penalty for murder: the death penalty or life imprisonment, without the possibility of parole?

	The death penalty	Life imprisonment	No opinion
	%	%	%
2019 Oct 14-31	36	60	4

Another factor discouraging support for the death penalty is the publication of numerous studies debunking its supposed deterrent effect on crime. In 2009, a study by Professor Michael Radelet and Traci Lacock of the University of Colorado found that 88% of the nation's leading criminologists do not believe the death penalty effectively deters crime.

The establishment of nonprofit civil society organizations has equally played a crucial role in raising public awareness about the flaws in the death penalty system. Here are some key examples:

- Equal Justice Initiative (EJI) – Founded in 1989, EJI provides legal representation to individuals who have been wrongly convicted, unfairly sentenced, or subjected to abuse in state jails and prisons.
- Death Penalty Information Center (DPIC) – Established in 1990, DPIC offers credible research and analysis on capital punishment, providing clear, trustworthy, and timely information about its application.

[8] https://news.gallup.com/poll/1606/death-penalty.aspx (5th table)

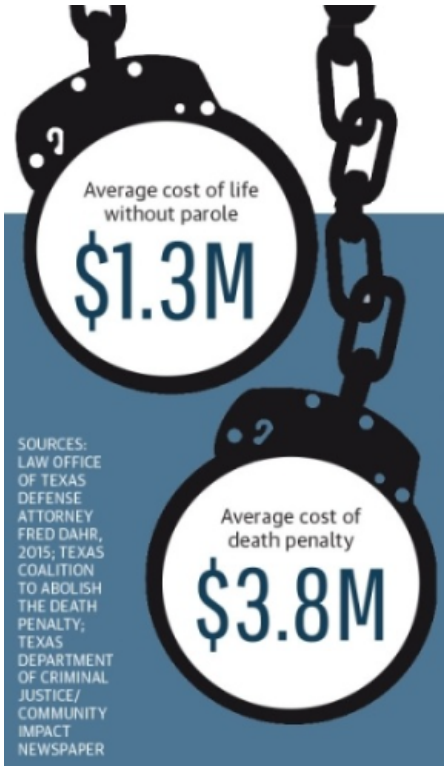
- Texas Coalition to Abolish the Death Penalty (TCADP) – Founded in 1995, TCADP is dedicated to ending the death penalty in Texas. The organization has more than 15,000 members and supporters, along with 35 organizational affiliates.
- National Registry of Exonerations – Launched in 2012, this registry documents every known exoneration in the United States since 1989, detailing cases in which individuals were wrongfully convicted and later cleared of all charges based on new evidence of innocence.
- Death Penalty Action (DPA) - Founded in 2017, is a national advocacy organization committed to abolishing the death penalty across the United States, including in Texas. Through advocacy, education, and action, DPA promotes alternatives to capital punishment. In Texas, DPA collaborates with local and statewide groups to support individuals on death row and to raise awareness about the issues surrounding capital punishment.

The high cost of death penalty

Support for the death penalty among local and state authorities also declined over time as evidence mounted showing that capital punishment systems were far more expensive than sentencing offenders to life imprisonment without parole. Death penalty cases take much longer to prepare, and defendants who can't afford a lawyer must be given two court-appointed attorneys. Jury selection is also more complicated and can take days or even weeks because jurors must be "death-qualified" (meaning they neither fully support nor oppose the death penalty). These cases involve more hearings, legal paperwork, and expert witnesses are unavoidable. Additionally, presenting evidence to argue for a lighter sentence can require significant travel expenses [9].

In 1992, *The Dallas Morning News* reported that the average cost of a Texas death penalty case was $2.3 million - more than three times the $750,000 cost of life imprisonment. These costs have continued to rise. A 2015 analysis by the Law Office of Texas defense attorney Fred Dahr confirmed the high expense of the death penalty, estimating an average cost per case of $3.8 million compared to $1.3 million for life without parole. [10]

[9] https://www.milkenreview.org/articles/the-steep-cost-of-capital-punishment
[10] https://www.texasdefenselaw.com/library/texas-funded-not-death-penalty/



The financial burden of the death penalty appears to have influenced sentencing patterns across Texas. More than half of the state's 250 counties have never imposed a death sentence, and even in counties with a history of using capital punishment, high costs may have deterred its frequent application. Norman Kinne, who served as a Dallas County District Attorney from 1987 to 1998, acknowledged this financial impact: "*Even though I'm a firm believer in the death penalty, I also understand what the cost is. If you can be satisfied with putting a person in the penitentiary for the rest of his life … I think maybe we have to be satisfied with that as opposed to spending $1 million to try and get them executed.… I think we could use (the money) better for additional penitentiary space, rehabilitation efforts, drug rehabilitation, education, (and) especially devote a lot of attention to juveniles.*"[11]

A research published in November 2023, revealed that in Texas "*counties meet the cost of a trial in two ways: by increasing property taxes and by reducing public safety expenditure (…)counties reduce public safety expenditure by an average of $1.2 million in years with a capital trial.*"[12]

Adding to the exorbitant costs of capital trials, the State of Texas has to pay a financial compensation for each wrongful incarcerations. Kerry Max Cook, exonerated from the death row and mentioned above, may be eligible for more than $3 million in compensation from the state for the time he spent locked up.

[11] https://deathpenaltyinfo.org/research/analysis/reports/in-depth/millions-misspent-what-politicians-dont-say-about-the-high-costs-of-the-death-penalty

[12] https://www.milkenreview.org/articles/the-steep-cost-of-capital-punishment

It is particular relevant for the conservative State of Texas that the CCATDP (Conservatives Concerned about the Death Penalty) says that *"don't trust the state to get it right. We already know that some innocent people have been sentenced to death, and for others it may already be too late*" and "*believe that small government and the death penalty don't go together, especially when we compare the high costs of capital punishment to life without possibility of release"* and *"wonder why we're investing so much in a system that doesn't keep us any safer than the alternatives* "[13]

The introduction of life without parole as an alternative for capital cases

Driven by the complex, costly and error-prone nature of death penalty proceedings, in 2005, Texas enacted legislation to give juries in capital cases the option of handing a sentence of life in prison without the possibility of parole.

At the time, Texas and New Mexico were the only states without this option, though New Mexico later abolished the death penalty entirely in 2009 [14].

The impact of the new law was immediate - death sentences dropped from 24 in 2004 to 14 in 2005 and have never exceeded that number since.

This shift reflected growing support among key criminal justice stakeholders, including juries, legislators, prosecutors, and victims' families, who increasingly favored life without parole. The bill passed with strong majorities in the state Senate and House of Representatives and enjoyed broad public support.

Further developments impacting the use of the death penalty in Texas

Although not a death penalty case, Timothy Cole's [15] wrongful long-term imprisonment became a landmark case that drew national attention to the Texas criminal justice system and highlighted the serious consequences of judicial error, especially in a state that also imposes the death penalty, an irreversible punishment. In 1985, Cole was wrongfully sentenced to 25 years in prison for a sexual assault he did not commit. Despite substantial evidence supporting his innocence, the judge dismissed these crucial elements, and Cole's subsequent appeals were rejected. Tragically, Cole died in prison in 1999, never knowing that another man had been attempting to confess to the crime.

Almost a decade after Cole's death, the Innocence Project of Texas (a non-profit organisation) took up his case, seeking a posthumous DNA test to prove Cole's innocence and identify the actual killer, whose earlier confession to the crime had been ignored. In response to this grave miscarriage of justice, Texas passed the Timothy Cole Act, which significantly reformed the state's compensation system for exonerees. The law increased payments to $80,000 per year of wrongful imprisonment, expanded post-release services for the exonerated, and extended compensation to families of those cleared after death.

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[13] About - Conservatives Concerned

[14] Texas Governor Signs Life Without Parole Bill Into Law | Death Penalty Information Center

[15] Timothy Cole - Learn Their Story | Innocence Texas

In this traditionally conservative Southern state, two additional developments may have influenced a shifting perspective on capital punishment in recent years.

First, the creation in 2013 of "Conservatives Concerned About the Death Penalty" (CCATDP). This national network of political and social conservatives challenged capital punishment on multiple grounds, arguing:

> "*Some of us believe that small government and the death penalty don't go together, especially when we compare the high costs of capital punishment to life without possibility of release.*
>
> *Some of us don't trust the state to get it right. We already know that some innocent people have been sentenced to death, and for others it may already be too late.*
>
> *Some of us are disturbed by the roller coaster for family members of murder victims, or wonder why we're investing so much in a system that doesn't keep us any safer than the alternatives.*
>
> *Some of us believe that the death penalty contradicts our values about protecting life.*
>
> *And for many other reasons… "*

The CCATDP "*call for an end to capital punishment, citing exorbitant costs*" [16].

The establishment of CCATDP follows a long tradition of notable Republicans, some of whom were staunch defenders of the death penalty early in their careers. A prime example is lifelong Republican and Nixon-appointed Supreme Court Justice Harry Blackmun. He wrote: "*From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored - indeed, I have struggled - along with a majority of this Court, to develop procedural and substantive rules that would lend more than the mere appearance of fairness to the death penalty endeavor. Rather than continue to coddle the Court's delusion that the desired level of fairness has been achieved and the need for regulation eviscerated, I feel morally and intellectually obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies. The basic question - does the system accurately and consistently determine which defendants "deserve" to die? - cannot be answered in the affirmative" [17].*

The second key development is the Pope Francis landmark declaration in October 2017, addressing participants at a meeting of the Pontifical Council for Promoting the New

[16] Home - Conservatives Concerned
[17] Justice Blackmun: Death penalty wrong

Evangelization. He acknowledged the Catholic Church's historical support of capital punishment while firmly rejecting its modern use[18]:

"In past centuries, when means of defence were scarce and society had yet to develop and mature as it has, recourse to the death penalty appeared to be the logical consequence of the correct application of justice. Sadly, even in the Papal States recourse was had to this extreme and inhumane remedy that ignored the primacy of mercy over justice. Let us take responsibility for the past and recognize that the imposition of the death penalty was dictated by a mentality more legalistic than Christian. Concern for preserving power and material wealth led to an over-estimation of the value of the law and prevented a deeper understanding of the Gospel. Nowadays, however, were we to remain neutral before the new demands of upholding personal dignity, we would be even more guilty. (...)It is necessary, therefore, to reaffirm that no matter how serious the crime that has been committed, the death penalty is inadmissible because it is an attack on the inviolability and the dignity of the person." This pronouncement led to a historic revision of Catholic doctrine in 2018, when the Church officially amended its teachings to explicitly oppose capital punishment.

Krisanne Vaillancourt Murphy, executive director of Catholic Mobilizing Network in the US, told OSV News in February 2025, "*We know that both the state and federal death penalty systems are broken beyond repair, and emblematic of a throwaway culture ...) as pilgrims of hope, we will pray and advocate and educate and advance restorative practices until this system of death is dismantled and our communities flourish amid a culture of life.*" [19]

Conclusion

Texas has long been the epicenter of capital punishment in the United States, carrying out 591 executions by 2024. However, its record of 18 wrongful convictions and 10 presumed wrongful executions raises serious concerns about the reliability of its judicial system. In total, Texas has seen 28 confirmed or suspected miscarriages of justice over 48 years - an average of one every two years. How many people would trust an airline with serious mechanical issues every two years, some of them with casualties? And yet, the death penalty system in Texas is still "flying", though at a "much lower altitude".

Indeed, an analysis of Texas's death penalty system from 1982 to 2024 reveals a significant decline in its use. After peaking at 48 death sentences in 1998, the number steadily dropped to an average of just 3.7 per year over the last decade. This trend mirrors national shifts that have intensified over the past two decades. Eleven states have abolished capital punishment since 2007, bringing the total number of abolitionist states to 23. When combined with the 12 states that have either imposed moratoriums or not carried out an execution in at least a decade, more than two-thirds of U.S. states have effectively abandoned the practice.

While the reduced use of the death penalty lowers the number of wrongful executions, it cannot prevent them from still occurring.

[18] To participants in the meeting promoted by the Pontifical Council for Promoting the New Evangelization (11 October 2017) | Francis

[19] Catholics in these red states are pushing back against death penalty

The steady decline in Texas's death sentences and executions is driven by growing public awareness of its flaws, the high financial costs of capital cases, declining public support, the introduction of life without parole in 2005, advocacy from civil society organizations, and shifting conservative perspectives.

As national attitudes toward the death penalty continue to evolve, Texas is getting closer to the states that have completely abandoned the practice.

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