



Brief: Capital Punishment

86th Regular Session, Policy Paper No. 12 of 40

March 13, 2019

Key Points:

1. We call to repentance the inmates whom the world has given up for lost.
2. Death sentences have been declining in Texas for 30 years (see Figure 2).
3. Laws on sentencing, mental illness, & the law of parties can be improved.

A Catholic perspective: We oppose the imposition of the death penalty. According to Church teaching, a civil government's response to crime should be to uphold justice by achieving four goals: rehabilitate offenders, protect society from offenders, deter future offenses, and redress the disorder caused by the offense.

Assuming the guilty party's identity and responsibility have been fully confirmed, the Church's traditional teaching does not exclude recourse to the death penalty if it is the only way of effectively defending human life against unjust aggressors.^[1] In 2018, the Vatican provided that, if the political and social situation of the past made the death penalty acceptable to protect the common good, today three conditions give rise to a new recognition of the death penalty's inadmissibility:

1. the increasing understanding that a person does not lose his or her dignity even after committing the most serious crimes,
2. the deepened understanding of the significance of a State's penal sanctions, and
3. the development of more effective detention that guarantees citizens' protection.^[2]

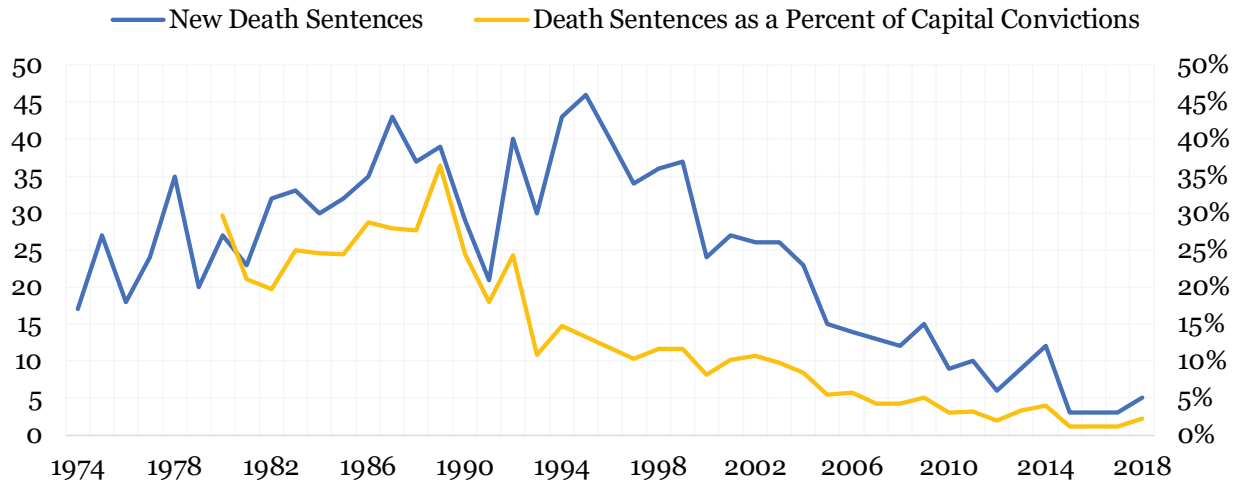
Accordingly, we work to end the use of the death penalty in Texas.^[3] Each week, our prison ministers call to repentance those inmates who have lost hope and whom the world has given up for lost. Christians do so because God

“desires all men to be saved and to come to the knowledge of the truth.”^[4] In the face of crime, Catholics work to console the suffering and rehabilitate offenders; we call upon the state to protect society from offenders using means which recognize the dignity of every person.

Texas Law and Policy: Texas law currently maintains death as a punishment for murder as well as for intentionally encouraging, directing, or aiding a primary offender who commits murder, even if the individual did not himself commit murder.^[5] While Texas has imposed the death penalty since 1819, the U.S. Supreme Court ruled in *Furman v Georgia* (1972) that the death penalty violated the 8th and 14th Amendments, though the Court granted that states could reform their statutes to maintain capital punishment.^[6] After reforming its state law 1973, Texas resumed capital punishment in 1982, and Figure 1 (online only) illustrates the number of annual executions since that time. Figure 2 (next page) illustrates the number of new death sentences handed down each year since 1975 and the percent of capital murder convictions resulting in a death sentence.

Imposition of capital punishment in Texas is declining for at least three reasons: first, state legislators established the possibility of sentencing capital offenders to life without parole in 2005.^[7] Second, the Texas Court of Criminal

Figure 2: Annual number of death sentences & death sentences as a percent of capital convictions in Texas (1975 - 2018)



Source: Office of Court Administration, Lisa Robles email to author. Nov. 12, 2018. Capital convictions refers to all convictions for capital murder.

Appeals is granting more motions for stay of execution.^[8] Finally, prosecutors currently seek the death penalty at low rates.^[9]

Texas law can be incrementally improved by reforming the instructions given to a jury that may sentence a convict to death. In the sentencing phase of a capital case, the jury must decide three issues: (1) whether the defendant is likely to be a continuing violent threat to society, (2) whether the defendant killed or intended to kill a victim, and (3) whether a mitigating circumstance warrants life imprisonment without parole instead of death.^[10] A court shall only impose a death sentence if the jury *unanimously* answers: “yes” to issues #1 and #2 and “no” to issue #3. If a *single* juror does not answer in this way, the court must sentence the defendant to life without parole.^[11] The practical effect is that every single juror in the sentencing phase is empowered to deliver a sentence of life without parole. However, under current law, a judge is required to instruct the jury that a defendant will receive life without parole only if *two* jurors—acting together—deliver a life sentence.^[12] This is a lie, and it is immoral that a deliberation which

seeks to find justice mandates a lie. Capital sentencing jury instructions must be reformed.

Key bill summaries: SB 294 / HB 246 & HB 336 repeal the death penalty in Texas while allowing life without parole. We support this bill to end the use of the death penalty.

HB 1030 / SB 716 ensures judges can fully explain a jury’s options to sentence an offender to death or life in prison. We support this bill to inform juries of sentencing options.

HB 472 eliminates the law of parties for capital murder. We support this bill to ensure that individuals are held accountable and make restitution for their own actions.

HB 1139 / SB 418 prohibit the use of the death penalty on the intellectually disabled. We support this bill to reduce the use of the death penalty.

Call to action: To support this proposal, please visit txcatholic.org/justice to find and contact your lawmaker. Please also pray for Texas and for our legislators, that they may maintain just laws which console the suffering and rehabilitate offenders.

Endnotes

1. Catechism #2267; St. John Paul II, *Evangelium Vitae [The Gospel of Life]*. Sec. 56. See Gen. 9:5-6; Ex. 20:13; Num. 16:20-38; Est. 7:1-10; Rom. 13:1-7; Mt. 15:1-9; Mk. 7:9-13; Lk. 23:40-43; Jn. 19:11. See St. Augustine, City of God 1.21; St. Thomas Aquinas, Summa contra gentiles III.146; [Roman Catechism of the Council of Trent on the Fifth Commandment](#), 257-263, esp. 258.
2. CDF, [Letter to the Bishops regarding the new revision of number 2267 of the Catechism of the Catholic Church on the death penalty](#). (Aug. 1, 2018); The Vatican, [New revision to Catechism #2267](#). August 2, 2018.
3. As we read in Ez. 33:11: “As I live, says the Lord God, I have no pleasure in the death of the wicked, but that the wicked turn from his way and live...”
4. 1 Tim 2:4; Pope Paul VI, *Gaudium et Spes [Joy and Hope]*. Sec. 22.5.
5. Penal Code § [19.03](#); [7.02](#).
6. Texas Department of Criminal Justice, [Death Row Information: History](#); U.S. Dept. of Justice Bureau of Justice Statistics, [Capital Punishment: 1979](#). Dec. 1980. 2.
7. Prior to 2005, Texas jurors could sentence a capital offender to life with parole or death, but instructions read by judges to the jury noted that, after 40 years, “the defendant will become eligible for release on parole,” and that “it cannot be predicted how the parole laws might be applied to this defendant if the defendant is sentenced to a term of imprisonment for life...” See [79 RS SB 30 \(2005\)](#), Section 8.
8. Code of Criminal Procedure § [44.251](#); Texas Coalition to Abolish the Death Penalty, [Texas Death Penalty Developments in 2018](#). 10-12.
9. Texas Office of Court Administration, Lisa Robles email message to author. (Nov. 12, 2018) According to OCA data, the death penalty was sought by prosecutors 4 times in 2018.
10. Code of Criminal Procedure, § [37.071\(b\)\(1\), \(b\)\(2\), and \(e\)\(1\)](#).
11. In other words, death cannot be imposed if a single juror answers “no” to issue #1, “no” to issue #2, or “yes” to issue #3. Code of Criminal Procedure § [37.071\(g\)](#).
12. Ibid. § [37.071\(d\)\(2\) and \(f\)\(2\)](#).