

## The Death Penalty: An Overview for Mental Health Professionals

### Introduction

The Texas After Violence Project views the death penalty as a [public health issue](#) and seeks to draw attention to the traumatic impact of the practice on a range of stakeholders – like [defense attorneys](#) and [prison guards](#), to name just two examples. As you work with people from any of these groups, and specifically with the family members of persons sentenced to death or executed (the focus of our report and webinar), you will likely find it helpful to become familiar with some basic facts about the history and current application of the death penalty. We've created this brief overview to address some common questions, point you to useful resources, and highlight some intersections between the death penalty and the mental health community.

### How does the death penalty work? How many states currently practice it?

Right now, the death penalty is legal in 28 of the 50 United States (and the federal government and the US military), but most executions happen in only a few of those states. Of the 1518 people who have been executed in the U.S. since 1976, 569 have been executed in Texas. You can see the numbers in other states [here](#). About 2500 people are currently on death row throughout the US, and there too, the [numbers](#) are not evenly distributed but rather are concentrated in a few states.

For mental health professionals working with family members or others who are directly affected by the death penalty, it's important to understand that the death penalty encompasses a lengthy process, beginning with a murder and then with an individual (or more than one person) getting arrested and charged with a capital crime. (Not all murder cases end up as death penalty cases.) Death penalty trials have two phases: one to determine whether the individual is convicted of the crime (found guilty) and one to determine whether that individual will be sentenced to death. Once someone receives a death sentence, many years will typically elapse before that individual is executed -- if in fact the execution takes place. During that time, while the prisoner is on death row, the family members may be participating in efforts to challenge the conviction or death sentence. The appeals process has [several stages](#) and each of these stages has the potential to cause, or reactivate, trauma in the individual's family members. The prisoner, and therefore the family, will typically face more than one scheduled execution date over the course of the appeals process.

### Compound trauma for families of color

It's important for mental health professionals who will be working with family members to be familiar with the death penalty's overall racial bias and specifically its connection to the historical/intergenerational trauma that African Americans have experienced in the United States. Most executions in this country have taken place in southern states, primarily those that, during the Civil War, were part of the Confederacy (which fought to retain the use of slavery). Today, African Americans make up 13% of Texas's population but 43.7% of the state's death row. The death penalty is sought for murders of white victims far more than for murders of victims of other races.

([source](#)) From these statistics and from historical analyses like [this one](#) and [this one](#), we can see that the death penalty in the United States is deeply connected to our nation's history of colonization, slavery, Jim Crow, and other types of state-sanctioned racism. (See also this [report](#) from Amnesty International). Consequently, mental health professionals must keep in mind that family members of persons sentenced to death or executed will likely be affected by, and reacting to, their experiences of racism throughout the process (such as the way their loved one was treated by law enforcement or the experience of being sentenced by an all-white jury, to name just two possible examples). In general, it is important to be aware of the ways in which power disparities (involving race, class, and gender) operate within the criminal justice system overall and within the practice of the death penalty in particular.

## **How the mental health community has gotten involved**

Over the years, mental health professionals have played an important role in efforts to limit the application of the death penalty and draw attention to the impact of trauma in various forms. For example, mitigation specialists, who work with capital defense teams to gather information about a defendant's background that may help juries decide against imposing a death sentence, are typically social workers or other mental health professionals. The rise of the mitigation function in the capital defense process has paralleled the field's growing understanding of the impact of childhood abuse and neglect, traumatic brain injuries, and Post-Traumatic Stress Disorder.

The mental health community has been instrumental in two campaigns that resulted in US Supreme Court rulings limiting the application of the death penalty based on what the court termed "evolving standards of decency": the 2002 *Atkins v. Virginia* decision, which ruled the death penalty unconstitutional for people with intellectual disabilities, and the 2005 *Roper v. Simmons* decision, which ruled the death penalty unconstitutional for people who were under 18 at the time of the crime. (Subsequently, the use of psychometric assessment in connection with determinations of intellectual disability has been the subject of some controversy within the field. You can read more about that [here](#) and [here](#).) Mental health organizations continue to be involved in efforts to exempt people with severe mental illness from eligibility for the death penalty – on which the US Supreme Court has *not* yet ruled – and to draw attention to the ways in which living on death row exacerbates symptoms of mental illness. (More information [here](#) and [here](#).) Finally, because the law requires that individuals be deemed "competent" for execution (in other words, that they understand that their life is about to be ended, and why), mental health professionals are sometimes asked to make that determination – another sometimes controversial subject within the field.

## **Families of murder victims**

As you work with family members of persons sentenced to death or executed, you may find yourself grappling with questions about the impact of that process on the families of murder victims. Specifically, you may wonder how to hold the tension between the death sentence's traumatic impact on the prisoner's family members and the possibility that the families of the murder victim need that execution for their own healing and closure. We encourage you to become familiar with the [range of views](#) that family members of murder victims hold regarding the death penalty and the various [challenges](#) to the [concept of closure](#) in connection with the death penalty.