



ACS Issue Brief Reveals Flawed System For Poor Defendants Facing Death Penalty

Author's Study Urges New Approach To Providing Counsel

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WASHINGTON, D.C. -- The vast majority of counties in Texas are using an inherently flawed procedure to provide legal representation for poor defendants facing the death penalty, according to an Issue Brief released today by the American Constitution Society for Law and Policy (ACS).

University of Denver Sociology and Criminology Professor Scott Phillips studied more than 500 death penalty cases in Harris County, which includes Houston and leads the nation in executions, and discovered that a method of employing court-appointed lawyers is failing poor death penalty defendants due to a number of serious procedural flaws.

“Defendants who hired counsel for the entire case were never sentenced to death,” Phillips writes. “Even defendants who hired counsel for a portion of the case were substantially less likely to be sentenced to death than defendants with appointed counsel.

“The findings are not an indictment of appointed attorneys,” Phillips continues, “but rather an indictment of the structural deficiencies inherent in the appointment method of indigent defense. The system is flawed, *not* the individuals who work within the system.”

Phillips says his findings show that the appointed method of “indigent capital defense in Houston is not merely procedurally flawed – it has life and death consequences. He notes that “38 of the 41 defendants executed to date had appointed counsel.”

Phillips details several aspects of the appointment procedure in Texas that have created the flawed system. For example, the appointment method creates serious hurdles for the court-appointed attorney.

“Appointed counsel must request approval from the judge to hire support services, such as investigators and expert witnesses,” Phillips states. “Judges do not rubber stamp

defense requests. In fact, criminal defense attorneys report that 32% of requests for support services are denied.”

Although Phillips’ study examines Houston cases, he notes that “252 of the 254 counties in Texas use the appointment method, and Houston led the movement to reform indigent defense, suggesting that disparities in Houston are better understood as a conservative estimate of what is happening in other counties than an isolated problem.”

Phillips concludes his Issue Brief, “Hire A Lawyer, Escape the Death Penalty?” by calling for reform of the system by creating “a public defender office with resources proportionate to the DA’s office.” Such an office, Phillips maintains, would “reduce differential treatment and eliminate the structural deficiencies inherent in the appointment method. Houston’s distinction as the capital of capital punishment creates a special obligation to provide the most rigorous system of indigent defense possible.”

Phillips’ Issue Brief is [available here](#). Please Contact the ACS Communications Department to arrange interviews with the author.

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