

Tarrant County Criminal District Attorney Death Penalty Authorization Process

The death penalty authorization decision is unique to each individual case and defendant and is dictated by the particular facts and circumstances surrounding the individual capital murder case. In order to strive for consistency in the manner in which decisions to seek the death penalty are made in Tarrant County, this Death Penalty Authorization Process seeks to guide the analysis of whether to seek the death penalty in capital murder cases. It is the express purpose of this Process to ensure that the decision making be consistent from case to case and that the application of the death penalty be consistent among similarly situated cases to the greatest degree possible. No analysis or decision to seek the death penalty will be based on any impermissible or arbitrary consideration such as race, ethnicity, gender, religion, or socio-economic status.

Nothing set forth herein regarding the Death Penalty Authorization Process is intended to limit the discretion of the Criminal District Attorney in deciding whether to seek the death penalty in a particular case.

I. Initial Case Review

Within five (5) days after the filing of a capital murder case, the Assistant Criminal District Attorney (ACDA) to whom the case is assigned will provide a short, written summary of the facts and circumstances surrounding the offense to the Criminal District Attorney and the Chief of the Criminal Division. The ACDA will note if the capital murder defendant is 17 years of age or younger at the time of the offense and will file a Notice of the State's Intent Not to Seek the Death Penalty, providing a file marked copy to the Criminal District Attorney.

II. Grand Jury Investigation

Not later than 85 days after the date of the arrest of the defendant, the ACDA will present the case to the Grand Jury. The presentation will be based on an in-depth investigation done in regard to each potential death penalty defendant. Evidence in the following areas will be sought, if it exists:

1. The complete facts and circumstances surrounding the offense;
2. The Medical Examiner's investigation, autopsy, and reports;
3. The defendant's prior criminal history, including juvenile history, and evidence of any prior bad acts by the defendant;
4. The defendant's current and past jail and prison records;
5. The defendant's prior medical history;

6. The defendant's psychiatric, intellectual disability, and MHRM history;
7. The defendant's education and school history, including any available information regarding his IQ;
8. The defendant's family history and the circumstances of his upbringing;
9. The desires of the family of the victim(s) regarding any potential trial and/or punishment;
10. Any "weakness" of the facts of the case which might impact upon the State's ability to prosecute the case.

III. Death Penalty Memorandum

No later than two (2) weeks after the date of indictment, the assigned ACDA will prepare an in-depth Death Penalty Memorandum and present it to the Criminal District Attorney and the Chief of the Criminal Division. The Death Penalty Memorandum will outline and discuss:

- (1) the guilt or innocence of the defendant,
- (2) the defendant's future dangerousness,
- (3) any applicable party liability issues, and
- (4) the comparison of the weight of potential aggravating versus mitigating factors.

The Memorandum will include any relevant evidence or considerations pertinent to the guilt or innocence of the defendant and to the jury's answers to the special issues, including the heinousness of the offense, any particular vulnerability of the victim(s), any background or history of the victim(s) relevant to the circumstances of the offense, the relationship of the victim and the defendant, the impact of the offense upon the family of the victim(s), the impact of the offense upon the community at large, the prevalent sentiment within the community regarding the crime, and the attitude of the victim's family about the death penalty as a possible punishment for this case.

IV. Defense Presentation

In a case where the State is contemplating seeking the death penalty, the attorney(s) representing the defendant(s) will be provided the opportunity to meet with the Criminal District Attorney, the Chief of the Criminal Division, the ACDA assigned to the case, and such other persons designated by the Criminal District Attorney. The defense attorney(s) may make any presentation they deem important to be considered, including any mitigating facts and circumstances about the offense or regarding the particular defendant, and to discuss the possibility of any proposed agreed disposition of the case.

V. Formal Waiver of the Death Penalty

At any point during this Process, upon the decision of the Criminal District Attorney, the State may file a Notice of the State's Intent Not to Seek the Death Penalty in any case denoting its intention NOT to seek

the death penalty. A file-marked copy will be provided to the Criminal District Attorney and the Chief of the Criminal Division.

VI. Death Penalty Authorization

The decision by the Criminal District Attorney to seek the death penalty will be made only after due consideration of all the information presented by the assigned prosecutors and the defense attorneys in the appropriate case, as well as consideration of the proportionality of the sentence being sought compared to sentences obtained in similarly situated cases arising in Tarrant County, Texas. Once the affirmative decision to seek the death penalty has been made by the Criminal District Attorney in a particular case, a State's Notice of Intent to Seek the Death Penalty will be filed in the case by the ACDA and a file-marked copy provided to the Criminal District Attorney and the Chief of the Criminal Division.

The decision-making process of the Criminal District Attorney's Office concerning the decision whether to seek the death penalty, including the Initial Case Review and Death Penalty Memorandum described above, will remain confidential.