

Kansas v. Young Fact Sheet: ACLU Challenge to Death Penalty in Kansas

The ACLU's Capital Punishment Project, together with the ACLU of Kansas and the law firms of Hogan Lovells and Ali & Lockwood, is challenging the constitutionality of the Kansas death penalty under the state and U.S. Constitutions.

An unprecedented evidentiary hearing will begin on **February 6, 2023, at the Sedgwick County District Court.**

Legal Documents: <https://www.aclu.org/cases/kansas-v-kyle-young>

Background about the Death Penalty in Kansas

The death penalty in Kansas must be understood in the context of historical racial violence and lynching in Kansas. The link between lynchings and the death penalty is undeniable: the death penalty in Kansas, like lynching, has been employed disproportionately against Black men when white women are victims.

As Shawn Leigh Alexander lays out in his [expert report](#), as Black people from the Deep South migrated to Kansas after Reconstruction — escaping pervasive racial violence — white racial anxiety surged in Kansas. Specifically, this took the form of false accusation about Black men raping white women. Between 1860-1930, 13 Black men were lynched for an alleged rape accusation.

Throughout Kansas' history, the criminal legal system has deprived Black people of due process or equal protection.

- Black Kansans were (and continue to be) over-represented in the criminal legal system
- Black Kansans received significantly harsher punishments than white people who were convicted of the same offenses.
- When white people committed violence against Black Kansans, there was almost no accountability for the white perpetrators.
 - In 1936, a white man shot and killed a 15 year old Black boy in broad daylight in the center of town. No charges were filed, until an NAACP lawyer brought the case to trial. There was no conviction.

After the U.S. Supreme Court lifted its pause on all executions in 1976, Kansas reinstated the death penalty in 1994. Since that time, 15 people have been sentenced to death — four of whom are Black. Presently, there are nine people on Kansas' death row. Three of them are Black (a third) in a state that has a six percent Black population.

What you need to know about the death penalty in Kansas:

The death penalty in Kansas is racist, violating the right of the accused person to a fair jury

- Prosecutors' use of "death qualification" to exclude jurors opposed to the death penalty from capital juries disproportionately — and unconstitutionally — eliminates Black potential jurors from service. The result is juries that are more punishment and conviction prone than a truly representative group of jurors.

- For additional information on death qualification, see the [expert report](#) of Wanda Foglia.
- A new study in Sedwick County, KS shows death qualification has the effect of changing the composition of capital juries: “Death qualification significantly changed the percent of persons in the jury pool who said they were in favor of the death penalty, increasing the number from 61.3% of the overall jury pool to fully 70.7%.” The study found that Black women are likely to be disproportionately excluded from Sedgwick County capital juries through death qualification.
 - For additional information about death qualification in Sedgwick County, see the [expert report](#) of Mona P. Lynch.
- Prosecutors’ use of racially-motivated peremptory challenges further excludes Black potential jurors from service — and violates the Constitution’s prohibition against racially discriminatory motives in jury selection. Peremptory challenges allow the defense and prosecution to strike jurors for any reason — as long as it is not a race-based reason.
 - For additional information on peremptory challenges, see the [expert report](#) of Elizabeth Semel.

The death penalty in Kansas is exceedingly rare and unfairly applied, violating the prohibition against cruel and unusual punishment.

- Kansas has not executed a person in almost 60 years. The death penalty in Kansas is exceedingly rare.
- Kansas’s scattershot application of the death penalty consistently reflects both racial bias and ineffective legal representation.
- Cases where the victim was a white woman were significantly more likely to be charged with capital murder, compared to cases where the victim was a person of color.
 - For more information about how the race and gender of the victim has an effect on whether a prosecutor seeks death in Sedgwick County, see the [expert report](#) of Jeffery Fagan.
- In particular, where a Black man is charged with killing a white woman, the likelihood of prosecutors charging the defendant with capital murder, seeking a death sentence and the death sentence being imposed is significantly greater than any other defendant-victim racial combination. No white person charged with killing a Black person in Kansas between 1994 – 2021 has ever been sentenced to death.
 - For more information on how the race of the victim and the defendant has an effect on charging and sentencing across Kansas, see the [expert report](#) of Frank Baumgartner.
- The defense delivery system in Kansas is “at or beyond capacity to provide consistently effective representation to all persons facing the death penalty in Kansas. In spite of the existing dedicated staff in the [publicly funded] death penalty representation offices ... there are already clients who have not received the kind of representation that is essential to avoid arbitrary and capricious infliction of the punishment of death.”
 - For more information about the quality of capital defense lawyers in Kansas, see the [expert report](#) of Marc Bookman and Sean O’Brien.

The death penalty in Kansas doesn't keep us safer, costs more money than alternatives, and risks executing the innocent. Lacking a valid purpose, it cannot withstand any level of constitutional review.

- The death penalty creates an unacceptable risk of executing innocent people. The most accurate estimate of the rate of wrongful convictions of death row prisoners in the U.S. is 4.1 percent. The very existence of the death penalty exacerbates factors that lead to wrongful conviction, including prosecutorial misconduct.
 - For more information about wrongful convictions and exonerations, see the [expert report](#) of Trisha Rojo Bushnell.
 - To read about the devastating effects of wrongful conviction, see Floyd Bledsoe's [statement](#). Mr. Bledsoe was wrongfully convicted, served 16 years in prison for a crime he didn't commit, and was ultimately exonerated and released.
- The death penalty does not deter others from committing murder.
 - For more information about the studies finding no deterrent effect, see the [expert report](#) of Jeffery Fagan.
- Even though death sentences are rare in Kansas, sustaining the death penalty costs millions every year.
 - For more information about the cost of the death penalty, see the [expert report](#) of Frank Baumgartner and Philip Cook.

The [expert report](#) of Carol Steiker summarizes the evidence finding no valid public safety purpose for the death penalty because of the cost and the risk of wrongful conviction.