

Dear Members of the House Criminal Jurisprudence Committee,

My name is David Kirk. I am an Associate Professor of Sociology and a Faculty Research Associate of the Population Research Center at the University of Texas at Austin. I hold a Ph.D. in Sociology from the University of Chicago, and have been researching issues related to racial and ethnic disparities in crime and punishment since 1998. Thank you for allowing me this opportunity to present testimony on HB2458.

Mounting research evidence, particularly from Harris County, Texas, suggests that race has played a substantial role in decisions regarding whether a case advances to a death trial and whether a death sentence is imposed. A 2008 study by Professor Scott Phillips of the University of Denver asks “whether race influenced the District Attorney’s (DA) decision to pursue a death trial or the jury’s decision to impose a death sentence against adult defendants indicted for capital murder in Harris County, Texas from 1992 to 1999.”¹ Using regression analyses, Phillips concludes “that the race of the defendant and victim are both pivotal in the capital of capital punishment: death was more likely to be imposed against black defendants than white defendants, and death was more likely to be imposed on behalf of white victims than black victims.”² Phillips’s study represents a significant advance over prior research on race and capital punishment in Texas by statistically controlling for the influence of decisive factors such as the defendant’s criminal history and heinousness of the crime. These factors are important because, as Phillips and others have observed, an assessment of future dangerousness is one of the most critical factors considered for the sentencing decision.³

A more recent study on the use of the death penalty in Harris County, completed by Dr. Raymond Paternoster of the University of Maryland, adds to the compelling information about racial disparities in the imposition of death penalty trials in the county.⁴ This research uses a sophisticated statistical analysis known as propensity score matching to hone in on those 20 capital cases which are statistically equivalent to the Duane Buck capital case from 1997 on the leading factors that predict whether a capital case proceeds to a death trial (e.g., victim race, defendant’s criminal history, victim’s criminal history, gender of victim and defendant, and aggravating and mitigating factors). Paternoster sought to determine whether the defendant’s race influenced the outcome of those capital cases most similar to Buck’s. In the 20 cases, Dr. Paternoster finds considerable evidence of racial disparity in the advancement of cases to a death trial by the District Attorney as well as the imposition of the death penalty. The Harris County District Attorney was over three times more likely to seek the death penalty against African American defendants than against white defendants. Moreover, Harris County juries were more than twice as likely to impose death sentences on African American defendants. Importantly, Paternoster notes, “This disparity by race of the defendant, moreover, cannot be attributed to observed case characteristics because these cases are those that were most comparable.”⁵ In other words, because the cases were statistically equivalent except for the race of the defendant, the race disparities are not explained by differences in observed case characteristics. Dr. Paternoster's research conforms to highly rigorous standards for statistical analyses. His conclusion - that there is strong evidence of Black-White disparities in the advancement of cases to a death trial as well as the imposition of a death sentence - is the logical, and profoundly disturbing, conclusion to be drawn from the weight of the available data.

¹ Scott Phillips, *Racial Disparities in the Capital of Capital Punishment*, 45 *Houston Law Review* 809 (2008).

² *Id.* at 811-812.

³ *Id.* at 823. See also Jon Sorensen and James Marquart, *Future Dangerousness and Incapacitation*, 1998. In James R. Acker, Robert M. Bohm and Charles S. Lanier (eds.), *American's Experiment with Capital Punishment*.

⁴ Ray Paternoster, *Racial Disparity in the Case of Duane Edward Buck* (2013),

http://www.naacpldf.org/files/case_issue/Duane%20Buck-FINAL%20Signed%20Paternoster%20Report%20%2800032221%29.PDF

⁵ *Id.* at 6.