

# Capital Punishment in Missouri: An Analysis of Recent Executions, Constitutional Concerns, and Paths to Abolishing the Unjust Practice

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## Introduction

The Supreme Court's decision in *Furman v. Georgia* (1972) began a nationwide moratorium on executions in the United States.<sup>1</sup> Four years later, the Supreme Court decided in *Gregg v. Georgia* (1976) that capital punishment was constitutional so long as it was not used "capriciously and arbitrarily."<sup>2</sup> Since resuming executions in 1989, the state of Missouri has executed 102 people.<sup>3</sup> There is much debate about the constitutionality of and other institutional concerns about capital punishment, and several sections of the Missouri Constitution are important in these debates. Article I, Section 10 of the Missouri Constitution states, "That no person shall be deprived of life, liberty or property without due process of law."<sup>4</sup> Article I, Section 2 of the Missouri Constitution also states "that all persons are created equal and are entitled to equal rights and opportunity under the law."<sup>5</sup> Article I, Section 21 of the Missouri Constitution reads, "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."<sup>6</sup> Many institutional concerns of capital punishment are contrary to due process, equal rights protections, and protections against cruel punishments. Some institutional concerns include the execution of those with mental illness, the prevalence of racial and other jury bias, a lack of physical evidence and eyewitnesses in the cases of those

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<sup>1</sup> Elaine McArdle, *The End of the Death Penalty?*, HARV. L. BULL., Spring 2023, at 12, 14, <https://hls.harvard.edu/today/the-end-of-the-death-penalty/>.

<sup>2</sup> *Gregg v. Georgia*, 428 U.S. 153, 206 (1976).

<sup>3</sup> *Missouri*, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/missouri> (last visited Feb. 8, 2026).

<sup>4</sup> Mo. Const. art. I, § 10.

<sup>5</sup> Mo. Const. art. I, § 2.

<sup>6</sup> Mo. Const. art. I, § 21.

executed, the use of lethal injection, the influence of politics in capital cases, and the use of judge override with deadlocked juries. These concerns are prevalent when analyzing the last three executions in Missouri: David Hosier, Marcellus Williams, and Lance Shockley. These constitutional concerns display the need to abolish capital punishment in Missouri.

### **David Hosier: Mental Illness**

David Hosier was executed on June 11, 2024 by lethal injection after the murder of a couple in Jefferson City.<sup>7</sup> Hosier was found guilty of the 2009 double homicide of Angela Gilpin, with whom he had previously been involved in an affair, and her husband Rodney Gilpin.<sup>8</sup> Hosier was arrested after appearing to have fled to Oklahoma with “15 firearms, numerous forms of ammunition, a bulletproof vest, a crowbar, latex gloves, a homemade police baton, and a knife” along with notes describing Angela Gilpin’s car and implying that dishonesty caused him to act irrationally.<sup>9</sup> Hosier also left voicemails to someone threatening Angela Gilpin.<sup>10</sup> In Angela Gilpin’s bag, there was a form to file a protective order against Hosier and another document that stated she was afraid that Hosier would attack her and her husband.<sup>11</sup>

Hosier’s guilt relies solely on circumstantial evidence.<sup>12</sup> Hosier’s defense emphasized that there was no “evidence directly tying Hosier to the scene at the time of the crime.”<sup>13</sup> Hosier maintained his innocence.<sup>14</sup> A lack of physical evidence from the crime scene is a common trend

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<sup>7</sup> Doha Madani, *Missouri Inmate David Hosier Maintains Innocence Ahead of Execution*, NBC News (June 11, 2024, 6:00 AM CDT), <https://www.nbcnews.com/news/us-news/missouri-inmate-david-hosier-maintains-innocence-execution-rcna156542>.

<sup>8</sup> *Hosier v. State*, 593 S.W.3d 75, 80 (Mo. 2019) (en banc).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 84.

<sup>13</sup> Petition for Writ of Certiorari at 3, *Hosier v. Vandergriff*, No. 23-6703 (U.S. Aug. 18, 2023).

<sup>14</sup> Doha Madani, *Missouri Inmate David Hosier Maintains Innocence Ahead of Execution*, NBC News (June 11, 2024, 6:00 AM CDT), <https://www.nbcnews.com/news/us-news/missouri-inmate-david-hosier-maintains-innocence-execution-rcna156542>.

in capital cases, which will be further analyzed in another case with less convincing circumstantial evidence.

When David Hosier was 16, his father died from a gunshot wound to the head that occurred while serving as a state police officer.<sup>15</sup> Hosier had a close relationship with his father, and he only went to therapy once following this loss.<sup>16</sup> In 1986, in the midst of a divorce and after losing his job, Hosier was “involuntarily committed” to Fulton State Hospital, a psychiatric institution.<sup>17</sup> Hosier was found to have a “severe, psychotic-level of depression” that would cause him to “lose his sense of reality,” and he had a “level of dissociation.”<sup>18</sup> In addition, his family found three suicide notes and described how he behaved similarly to a previous divorce.<sup>19</sup> The Circuit Court of Callaway County extended his hold to 21 days.<sup>20</sup> This court determined that Hosier was “mentally dangerous to himself and others.”<sup>21</sup> He was found to have “major depression with psychotic features,” and doctors suggested that he likely also had “bipolar disorder with psychotic features.”<sup>22</sup>

In 1993, Hosier pleaded guilty to battery for handcuffing and beating his girlfriend, who had received an order of protection against him and wanted him to move out.<sup>23</sup> In that Indiana case, the court recommended that Hosier receive psychiatric treatment, and he was sentenced to eight years in prison.<sup>24</sup> While in prison, he was diagnosed with “Dissociative Disorder, NOS.”<sup>25</sup>

There is no publicly available record of Hosier receiving mental health treatment beyond

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<sup>15</sup> *Hosier*, Pet. at 23, 27.

<sup>16</sup> *Id.* at 28.

<sup>17</sup> *Id.* at 24.

<sup>18</sup> *Id.* at 25.

<sup>19</sup> *Id.*

<sup>20</sup> Pet. for Commutation of Sentence at 12, *David Hosier v. Parson* (Mo. June 4, 2024), [deathpenaltypolicy.org](https://deathpenaltypolicy.org).

<sup>21</sup> *Hosier*, Pet. at 25.

<sup>22</sup> *Id.* at 26.

<sup>23</sup> *Hosier*, 593 S.W.3d at 81-82.

<sup>24</sup> *Id.*

<sup>25</sup> *Hosier* Pet. for Commutation of Sentence at 13.

diagnosis while in prison. In 2007, Hosier suffered brain damage from a stroke which strengthened his symptoms of mental illnesses.<sup>26</sup>

David Hosier is just one of many people who have been executed with a serious mental illness. It has been found that over 40 percent of people that were executed in the United States between 2000-2015 had at some point in time suffered from a severe mental illness, and this statistic is approximately 10 times that of the general population.<sup>27</sup> There was no question for the court that David Hosier suffered from serious mental illnesses, as these illnesses were diagnosed by psychiatric professionals and documented in previous court cases. The aggravating circumstances of Hosier's crime being a double homicide and of his prior battery conviction did exist, but Hosier's mental illnesses would constitute a mitigating factor that could have prevented his sentencing to execution.<sup>28</sup> Ultimately, it is up to the jury to weigh these factors and decide if the aggravating circumstances outweigh the mitigating circumstances, although there must be one aggravating circumstance proven "beyond a reasonable doubt."<sup>29</sup> Juries may focus solely on how horrible the crime committed was and ignore mitigating circumstances of mental illness and childhood trauma while weighing whether the aggravating and mitigating circumstances warrant execution, and some juries may even view these factors as unalterable factors of future danger, leading them to rule in favor of the death penalty.<sup>30</sup>

Considering Hosier's criminal history and past suicidal episode following a divorce, it appears that his mental health struggles were triggered by breakups, and these struggles could turn violent, making the murders predictable. While there are conflicting studies on this matter, a study by Bales et. al, which corrected past methodological errors, found that mental illnesses

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<sup>26</sup> *Hosier*, Pet. at 28-29.

<sup>27</sup> FRANK R. BAUMGARTNER ET AL., *DEADLY JUSTICE: A STATISTICAL PORTRAIT OF THE DEATH PENALTY* 244 (2018).

<sup>28</sup> Mo. Rev. Stat. § 565.032.2(1)-(2), .3(2) (2024).

<sup>29</sup> *Id.* § 565.032.1(1).

<sup>30</sup> BAUMGARTNER ET AL., *supra* note 27, at 237.

increase recidivism rates.<sup>31</sup> This study found that those with serious mental illnesses, such as bipolar disorder and major depressive disorder, tend to recidivate faster than others.<sup>32</sup> There was a substantial time gap between Hosier's time in prison and the time of the homicides, but this may be accounted for when considering the triggering effects of breakups on his mental illnesses and/or how his stroke intensified his mental illnesses. Ultimately, Hosier's case reflects a failure by the criminal justice system to adequately treat and support incarcerated people with mental illnesses.

Executing people with mental illnesses is a form of "cruel and unusual punishment" and is unconstitutional under Article I, Section 21 of the Missouri Constitution.<sup>33</sup> Hosier's mental illnesses clearly played a role in committing the double homicide. Having psychotic features in his mental illnesses likely meant that his judgment was significantly impaired compared to those without mental illnesses or with proper treatment and support. The Supreme Court decision *Atkins v. Virginia* found that it is unconstitutional under the Eighth Amendment to execute those with intellectual disabilities due to their "diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others."<sup>34</sup> Those with mental illnesses may be similarly less able to control and understand criminal situations. To sentence someone to execution when psychiatric treatment could potentially resolve the underlying causes of the crimes committed should be legally considered as "cruel," and is therefore unconstitutional. Given the disproportionate number of people with severe mental illnesses that are executed, capital punishment would need significant reform to be able to

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<sup>31</sup> William D. Bales et al., *Recidivism and Inmate Mental Illness*, 6 INT'L J. CRIMINOLOGY & SOCIOLOGY 40, 49 (2017).

<sup>32</sup> *Id.* at 50.

<sup>33</sup> Mo. Const. art. I, § 21.

<sup>34</sup> *Atkins v. Virginia*, 536 U.S. 304, 321, 318 (2002).

function constitutionally. A reform prohibiting the execution of those with mental illnesses would come with many complications such as determining which mental illnesses or severity of mental illnesses would qualify. This makes creating a reform that would adequately protect all with mental illnesses from “cruel” punishment difficult and unlikely.

### **Marcellus Williams: Racial Discrimination, Politics, and Forensic Evidence**

Marcellus Williams was executed on September 24, 2024, by lethal injection.<sup>35</sup> Williams, a Black man, was found guilty of the 1998 murder of Felicia Gayle, a White woman, in University City.<sup>36</sup> According to the court record, Williams broke into Gayle’s house, grabbed a butcher knife, and waited for Gayle to finish showering.<sup>37</sup> Once Gayle came downstairs, Williams stabbed her 43 times and took Gayle’s purse as well as her husband’s laptop.<sup>38</sup> Williams then went to see his girlfriend, Laura Asaro, who eventually noticed his bloody shirt, scratches on his neck, and the laptop.<sup>39</sup> Williams subsequently threw his clothes and backpack into a sewer drain.<sup>40</sup> Asaro found Gayle’s purse and ID in the trunk of Williams’s grandfather’s car, and Williams admitted the murder to Asaro but threatened to kill her and her loved ones if she told anyone else.<sup>41</sup> Williams sold the laptop to Glenn Roberts a few days after the murder.<sup>42</sup> Williams was arrested less than a month later for different charges, and while in jail he confessed the murder to his cellmate Henry Cole, who reported the information to the police after being

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<sup>35</sup> Cindy Von Quednow & Holly Yan, *Marcellus Williams Executed in Missouri Despite Prosecutors’ Calls to Overturn Conviction*, CNN (Sept. 25, 2024, 7:15 AM EDT), <https://www.cnn.com/2024/09/24/us/marcellus-williams-scheduled-execution-date>.

<sup>36</sup> *State v. Williams*, 97 S.W.3d 462, 466 (Mo. 2003).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 467.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

released.<sup>43</sup> When police contacted Asaro, she reported what Williams had told her, as well.<sup>44</sup> The police then found Gayle’s calculator and ruler in the trunk of Williams’s grandfather’s car.<sup>45</sup>

Williams’s case relied heavily upon the statements of Asaro, Roberts, and Cole. Asaro and Cole were both motivated by a \$10,000 reward by the family of the victim, and there were no eyewitnesses to the murder.<sup>46</sup> Additionally, hairs, footprints, and DNA evidence collected from the murder weapon were determined to not match Williams.<sup>47</sup> It was also discovered that the knife had been mishandled by investigators who did not wear gloves.<sup>48</sup>

Moreover, the prosecution dismissed six of the seven eligible Black jurors during jury selection.<sup>49</sup> During the trial, Roberts was not allowed to testify that Williams told him he was selling the laptop for Asaro, which led the jury to rely on non-evidence-based assumptions concerning how Williams came across the laptop.<sup>50</sup> Given the discovery of DNA evidence that did not match Williams, then-Missouri Governor Greitens granted a stay of execution and created a board of inquiry to review the case.<sup>51</sup> However, his successor, Governor Parson, subsequently dissolved the board and allowed Williams’s execution to resume.<sup>52</sup>

Constitutional concerns surrounding due process also arise from Williams’s case. Article I, Section 10 of the Missouri Constitution states, “That no person shall be deprived of life, liberty or property without due process of law.”<sup>53</sup> Capital punishment ends opportunities to appeal when they may still be valid. In Williams’s case, his attorneys filed many appeals that were denied

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Petition for Writ of Certiorari at 1, *Williams v. Missouri ex rel. Parson*, No. 24-5561 (U.S. Sept. 18, 2024).

<sup>47</sup> *Id.* at 1-2.

<sup>48</sup> Application for Stay of Execution of Sentence of Death at 9, Prosecuting Attorney, 21st Jud. Cir. ex rel. *Williams v. Missouri*, No. 24A274 (U.S. Sept. 18, 2024).

<sup>49</sup> *Williams*, Pet. at 1.

<sup>50</sup> *Williams*, 97 S.W.3d at 467-68.

<sup>51</sup> *Williams*, Pet. at 2-3.

<sup>52</sup> *Id.* at 3.

<sup>53</sup> Mo. Const. art. I, § 10.

shortly before his execution despite there being new evidence of a biased jury and contaminated evidence used in his trial.<sup>54</sup> Additionally, the three U.S. Supreme Court Justices that are considered liberal indicated that they favored hearing his case, which is just one justice short of doing so.<sup>55</sup> Any doubt to the defendant's guilt or potential legal issues in a capital punishment case should postpone an execution, yet Williams's execution occurred. Although many death row prisoners may appeal before their execution in an attempt to continuously push back their execution date without a valid cause, a narrative that this is always true in late appeals is dangerous in cases such as Williams's.

In the United States, the Supreme Court decision *In re Winship* held that guilt in criminal cases must be determined through the reasonable-doubt standard in accordance with the Due Process Clauses of the Fifth and Fourteenth Amendments.<sup>56</sup> The reasonable-doubt standard was first adopted in criminal cases in the late 1700s.<sup>57</sup> However, this decision has cemented this standard of proof for all criminal cases in the United States from 1970 onward. This means that the jury must not have an alternative explanation for the crime other than the guilt of the accused beyond a reasonable doubt. The discovery of DNA that did not match Williams at the scene of the crime in addition to no physical evidence linking him at the scene of the crime certainly introduces a reasonable doubt into the case. While legal, relying almost solely on the testimonies of those with external interests in testifying may be unreliable, and is especially concerning in capital cases. These factors create a reasonable doubt as to whether Williams committed the crime, although many such factors were not included in the original trial.

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<sup>54</sup> Von Quednow & Yan, *supra* note 35.

<sup>55</sup> *Id.*

<sup>56</sup> *In re Winship*, 397 U.S. 358, 364 (1970).

<sup>57</sup> *Id.* at 361.

This discovery, especially of the DNA that did not match Williams, should initiate a thorough reconsideration of the evidence, as Governor Greitens had begun. Governor Parson ending this process reflects a fault in the system of checks for the death penalty system. The board of inquiry formed by Governor Greitens would only make “its report and recommendations to the governor.”<sup>58</sup> This ultimately means that Governor Parson could have decided to allow the execution to occur regardless of what the board would have found if he had not stopped the board’s work because the process of a board of inquiry is entirely at the governor’s discretion. Williams’s case illustrates how political shifts can change the course of executive intervention in capital cases.

Despite efforts to ensure racial equality in the criminal justice system, this case clearly reflects that racial discrimination is still present in the system, especially with regards to capital punishment. Established research has shown that in the United States, “Black people who kill white victims—a rare event—are the most likely offenders to receive the death penalty.”<sup>59</sup> Williams was Black and Gayle was White, but the even more blatantly discriminatory aspect of the case was the racially discriminatory selection of jury members. Despite continuing advocacy for racial justice, this is not a unique occurrence to Williams’s capital case. In *Flowers v. Mississippi*, a 2019 Supreme Court case, Flowers, a Black man, was found guilty of the murders of four people in his sixth trial after previous trials were overturned due to racially discriminatory selection of jurors and other prosecutorial misconduct.<sup>60</sup> The Court held that there was racially discriminatory striking of jurors in this capital case since 41 out of the 42 Black potential jurors were struck including 5 of 6 Black jurors in the final trial, the prosecutor

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<sup>58</sup> Mo. Rev. Stat. § 552.070 (2016).

<sup>59</sup> Daniel S. Medwed, *Black Deaths Matter: The Race-of-Victim Effect and Capital Punishment*, 86 BROOK. L. REV. 957, 969 (2021).

<sup>60</sup> *Flowers v. Mississippi*, 588 U.S. 284, 287 (2019).

“engaged in dramatically disparate questioning of black and white prospective jurors,” and one Black juror was struck despite being very similar to a White juror.<sup>61</sup> While the Court did note that this is a unique case, given the amount of retrials and further complications in retrials, they did not decide whether all of the circumstances of the case were required to find unconstitutionally discriminatory striking of jurors.<sup>62</sup> As previously mentioned, six of seven Black jurors were struck from Williams’s case.<sup>63</sup> The prosecutor in Williams’s case admitted in a later hearing that he struck one of the Black jurors because they looked like they were “familial brothers,” and subsequently attempted to clarify this comment by stating, “I don’t mean Black people.”<sup>64</sup> These facts together indicate that racially discriminatory striking of jurors occurred. These discriminatory actions clearly violate the equal protections granted in Article I, Section 2 of the Missouri Constitution, and are therefore unconstitutional.<sup>65</sup> With racial inequalities existing in many institutional features of capital punishment, capital punishment ultimately does not serve the values of justice and equality that the criminal justice system must be constructed upon to maintain its legitimacy.

### **Lance Shockley: Judicial Override and Jury Bias**

Lance Shockley was executed on October 14, 2025 by lethal injection for a 2005 murder in Van Buren.<sup>66</sup> Shockley had been the driver in a fatal car accident, and Sergeant Carl DeWayne Graham, Jr. was investigating the accident.<sup>67</sup> Shockley was under the influence when the accident occurred.<sup>68</sup> According to the court record, a few months later, Shockley borrowed his

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<sup>61</sup> *Id.* at 288.

<sup>62</sup> *Id.* at 315-16.

<sup>63</sup> *Williams*, Pet. at 1.

<sup>64</sup> Resp’t’s App. to Br. in Opp’n at 343a, *Williams v. Vandergriff*, Nos. 24-5606 & 24A286 (U.S. Sept. 23, 2024).

<sup>65</sup> Mo. Const. art. I, § 2.

<sup>66</sup> *Missouri Set to Execute Man Convicted of Killing Trooper in Carter County*, KFVS12 (Oct. 14, 2025, 6:01 PM), <https://www.kfvs12.com/2025/10/14/missouri-set-execute-man-convicted-killing-trooper-carter-county/>.

<sup>67</sup> *Shockley v. State*, 579 S.W.3d 881, 890 (Mo. 2019).

<sup>68</sup> Petition for Writ of Certiorari at 31, *Shockley v. Vandergriff*, No. 24-517 (U.S. Nov. 4, 2024).

grandmother's car, which people recognized at the scene of the crime, and Shockley shot Graham three times in his driveway right after ending his shift.<sup>69</sup> There have been questions as to whether ballistics evidence that connected Shockley to the crime was accurate, and there were no eyewitnesses.<sup>70</sup> As with the last two cases, Shockley's case represents the lack of indisputable physical evidence at the scene of the crime or eyewitnesses linking the accused to the crime in a capital punishment case.

Jury selection and the inclusion of a biased juror presented potential errors in Shockley's trial. One juror in Shockley's case had written a book about a heroic character murdering the drunk driver that killed his wife and did not face a harsh sentence in court.<sup>71</sup> This is incredibly similar to Shockley's accident and undoubtedly shows a negative bias in Shockley's juror. This juror was removed from Shockley's punishment determination phase, but the juror had already participated in determining Shockley's guilt and served as the jury foreman by the time the book was discovered.<sup>72</sup> Article I Section 18(a) of the Missouri Constitution states that the accused has the right to "a speedy public trial by an impartial jury of the county."<sup>73</sup> In this case, Shockley had a biased juror, which is unconstitutional, that had an influence during the guilt phase of his trial. This demonstrates another example of an unconstitutional trial leading to an execution.

The more concerning institutional aspect of Shockley's case is that Shockley was issued the death penalty by the judge despite the jury being split on his punishment.<sup>74</sup> This specific practice is only permitted in Missouri and Indiana.<sup>75</sup> This system has been influenced by several

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<sup>69</sup> *Shockley*, 579 S.W.3d at 890-91.

<sup>70</sup> *ABA Supports Clemency for Missouri Prisoner Who Was Denied DNA Testing*, Am. Bar Ass'n (Jan. 6, 2026), [https://www.americanbar.org/groups/committees/death\\_penalty\\_representation/project\\_press/2025/year-end-2025/aba-clemency-lance-shockley/](https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2025/year-end-2025/aba-clemency-lance-shockley/).

<sup>71</sup> *Shockley*, 579 S.W.3d at 893.

<sup>72</sup> *Id.* at 894

<sup>73</sup> Mo. Const. art. I, § 18(a)

<sup>74</sup> *ABA Supports Clemency*, *supra* note 70.

<sup>75</sup> Michael J. Essma, *DEAD-Locked: Evaluating Judge-Imposed Death Sentences Under Missouri's Death Penalty Statute*, 85 Mo. L. REV. 271, 272 (2020).

different precedents. In 2002, *Ring v. Arizona* established the precedent that the jury must find an aggravating factor beyond a reasonable doubt in order for a judge to sentence the accused to execution.<sup>76</sup> In 2016, *Hurst v. Florida* clarified that a system that required the jury to make a suggestion for sentencing that a judge was not legally bound to did not satisfy the *Ring* precedent and that a judge may not find an aggravating factor alone to justify a death sentence.<sup>77</sup> To align with federal rulings, Missouri's current precedent was established in 2019 by *State v. Wood*, which mandates that a split jury must find an aggravating factor beyond a reasonable doubt for a judge to weigh the aggravating and mitigating factors and sentence someone to capital punishment.<sup>78</sup> The jury determined that there were three aggravating factors proven beyond a reasonable doubt in Shockley's case: the victim was murdered for his work as a "peace officer," the murder occurred to avoid a lawful arrest, and the victim was murdered due to being a potential witness in an investigation.<sup>79</sup> This allowed the judge to decide on the death penalty for Shockley's punishment, despite a biased guilt phase of the trial.

In the United States, judges are much more likely to sentence someone to capital punishment than a jury.<sup>80</sup> Additionally, judges in Missouri sentence a higher rate of Black defendants to capital punishment than the average rate for all those who are sentenced to capital punishment in the state, although this is based on a small number of cases.<sup>81</sup> Although judges are highly trained and are expected to be unbiased, certain biases judges may not be aware of (i.e. unconscious bias) could impact their decisions in determining punishment in these cases. While jurors could also have unconscious biases, other jurors may not have the same biases or may be

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<sup>76</sup> *Id.* at 276-77.

<sup>77</sup> *Id.* at 277-78

<sup>78</sup> *Id.* at 283-84.

<sup>79</sup> Shockley, 579 S.W.3d at 891-92.

<sup>80</sup> Valerie P. Hans et al., *The Death Penalty: Should the Judge or the Jury Decide Who Dies?*, 12 J. EMPIRICAL LEGAL STUD. 70, 91 (2015).

<sup>81</sup> Katie Moore, *Judges in Missouri Can Levy Death if Juries Deadlock. Some Say the Law Is Unconstitutional.*, The Marshall Project (June 26, 2025), <https://www.themarshallproject.org/2025/06/26/missouri-death-penalty-judges>.

able to point biases out during deliberations. Therefore, leaving the sentencing decision to only the judge introduces additional risk of biases leading to an unfair decision in cases with the most at stake: a death sentence. The cases that would lead to a deadlocked jury and ultimately allow the judge to make the decision regarding punishment must be complex, which makes it more dangerous for the decision to be in one person's hands.

The American court system was designed with the understanding that no one person should have the power to make decisions such as these, yet the punishment for the most complex cases with the highest level of punishment may be decided by a judge in certain circumstances. It was found that cases in which the judge decided on the death penalty and there had been at least one juror who had not voted in favor of the death penalty comprised “more than 90% of the death-row exonerations.”<sup>82</sup> This means that most convicts who received the death penalty but were later found to be innocent were sentenced by judges, which suggests that judges sentence more innocent people to the death penalty than juries. In Missouri, there have only been four exonerations.<sup>83</sup> Considering the amount of controversy and errors in Marcellus Williams's case, the low number of exonerations likely represents a less receptive system of appeals in Missouri. Sentencing innocent people to the death penalty is the ultimate failure of the criminal justice system, and it would be difficult to believe that an innocent person has not been executed given the difficult appeals process.

### **Constitutional Implications of “Cruel and Unusual Punishment”**

There is much debate about whether capital punishment qualifies as “cruel and unusual punishment.” The 1958 Supreme Court decision of *Trop v. Dulles* discussed denationalization as

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<sup>82</sup> *DPIC Analysis: Exoneration Data Suggests Non-Unanimous Death-Sentencing Statutes Heighten Risk of Wrongful Convictions*, Death Penalty Info. Ctr. (Mar. 13, 2020), <https://deathpenaltyinfo.org/dpic-analysis-exoneration-data-suggests-non-unanimous-death-sentencing-statutes-heighten-risk-of-wrongful-convictions>.

<sup>83</sup> *Innocence by the Numbers*, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/policy-issues/policy/innocence/innocence-by-the-numbers> (last visited Feb. 8, 2026).

a punishment for deserting the military during war.<sup>84</sup> In the decision, Chief Justice Warren stated that the Eighth Amendment “must draw its meaning from the evolving standards of decency that mark the progress of a maturing society.”<sup>85</sup> This precedent may be applied in analyzing contemporary Eighth Amendment concerns surrounding capital punishment. Despite the United States’ long history of capital punishment, this interpretation supports the argument that current methods of execution are painful and have the potential to cause unexpected side effects, which makes executions legally cruel.

The Supreme Court’s 1976 decision of *Gregg v. Georgia* found that capital punishment as a whole is not unconstitutional when used for the proportional offense of murder due to its historical use and public support at the time of the decision, indicating that societal standards had not yet evolved beyond capital punishment.<sup>86</sup> The Court concedes that the deterrent effect of capital punishment is disputed.<sup>87</sup> Today, however, 60% of Americans would choose life imprisonment without the possibility of parole over the death penalty as the optimal punishment for murder.<sup>88</sup> This displays a new standard of decency regarding capital punishment which should be considered, and this makes the historical use of the death penalty less relevant in deciding its constitutionality under the Eighth Amendment today. The Supreme Court’s 2015 decision in *Glossip v. Gross*, which held that lethal injection is unconstitutional only if there is a substantial risk of severe pain and no better alternative exists, relies on the premise that capital punishment is constitutional and therefore a constitutional method of implementing it must exist.<sup>89</sup> If applying the new standard of decency to find capital punishment wholly or partly unconstitutional, then this precedent no longer has effect.

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<sup>84</sup> *Trop v. Dulles*, 356 U.S. 86, 87 (1958).

<sup>85</sup> *Id.* at 101.

<sup>86</sup> *Gregg v. Georgia*, 428 U.S. 153, 168-87 (1976).

<sup>87</sup> *Id.* at 184-85.

<sup>88</sup> *Death Penalty*, Gallup, <https://news.gallup.com/poll/1606/death-penalty.aspx> (last visited Mar. 10, 2026).

<sup>89</sup> *Glossip v. Gross*, 576 U.S. 863, 867-80 (2015).

Regardless of these precedents, it is worth considering if Missouri's method of capital punishment presents a substantial risk of severe pain. Currently, both lethal injection and lethal gas are legal methods of execution in Missouri.<sup>90</sup> Lethal gas, however, has not been used for an execution in Missouri since 1965.<sup>91</sup> For lethal injections, Missouri uses the drug pentobarbital.<sup>92</sup> With many pharmaceutical companies refusing to provide drugs for executions and some states turning to unapproved drugs or illegal methods to obtain them, there are concerns about the quality and therefore effectiveness of the drugs used in lethal injections.<sup>93</sup> The use of new methods of lethal injection in the United States typically lacks adequate if any scientific research before being tested on prisoners during executions.<sup>94</sup> Changing precedents surrounding the constitutionality of certain methods of execution often leads to implementing these untested changes in lethal injections to avoid stopping executions.<sup>95</sup> When testing these methods on those being executed without scientific backing, the state cannot ensure that adverse and cruel effects would not occur. In lethal injections using pentobarbital and other compounds of drugs, 80% of those executed were found to have pulmonary edema after having been executed, and if they were conscious when this occurred it would have felt as if they were painfully drowning.<sup>96</sup> While lethal injection may seem to be more humane when compared to lethal gas and other execution methods, the prevalence of pulmonary edema demonstrates that this method does present a large risk of severe pain, thus making the practice constitutionally unsound.

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<sup>90</sup> Mo. Rev. Stat. § 546.720.1 (2016).

<sup>91</sup> Sandra Davidson & Michael Barajas, *Masking the Executioner and the Source of Execution Drugs*, 59 ST. LOUIS U. L.J. 45, 86 (2014).

<sup>92</sup> Missouri's New Execution Protocol Hides Source of Drugs, Death Penalty Info. Ctr. (Nov. 18, 2013), <https://deathpenaltyinfo.org/missouris-new-execution-protocol-hides-source-of-drugs>.

<sup>93</sup> Owen Dyer, *The Slow Death of Lethal Injection*, BMJ, Apr. 29, 2014, at g2670.

<sup>94</sup> Paul Kaplan, *Challenges to the Contemporary Death Penalty in the United States*, 20 ANN. REV. L. & SOC. SCI. 353, 355 (2024).

<sup>95</sup> *Id.*

<sup>96</sup> Joel Zivot, *The Physician in the Execution Chamber: No Such Thing as the Normal Pain of Dying*, 53 CAL. W. INT'L L.J. 307, 315-16 (2023).

## **Abolishing Capital Punishment in Missouri**

The last three executed individuals in Missouri all had unconstitutional factors in their trials which displays how the process of sentencing someone to execution is flawed in numerous ways that would make reforms unlikely to ensure that capital punishment is utilized fairly and constitutionally. David Hosier's case shows flaws in Missouri's capital punishment system regarding the execution of people with severe mental illnesses. Marcellus Williams's case demonstrates how racial bias can present itself in capital punishment trials, political shifts can interfere with government intervention in capital punishment cases, and how evidence proving the defendant's innocence can be ignored in Missouri capital cases. Lance Shockley's case demonstrates the influence of other juror bias and of the ability for judges to override a deadlocked jury in capital cases. Additionally, the capital punishment system is unconstitutional because of cruel methods of execution. For these reasons, capital punishment must be abolished.

Capital punishment could be abolished by the state legislature, governor, or through the judicial system. For a bill abolishing capital punishment to pass in the state legislature, it would have to gain Republican support, and the governor would have to not veto the bill. If the bill passed with Republican support in the legislature, the governor likely would not veto it.

Abolishing capital punishment could be a bipartisan legislative effort. In the United States, 81% of Republicans and 32% of Democrats support the death penalty while only 68% of Republicans believe that the death penalty is applied fairly.<sup>97</sup> In Lance Shockley's case, 79% of Missouri Democrats and 53% of Missouri Republicans would have supported the governor

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<sup>97</sup> Megan Brenan, *New 47% Low Say Death Penalty Is Fairly Applied in U.S.*, Gallup (Nov. 6, 2023), <https://news.gallup.com/poll/513806/new-low-say-death-penalty-fairly-applied.aspx>.

issuing clemency.<sup>98</sup> These statistics demonstrate how Republicans approve of the concept of capital punishment but often do not approve of how it is implemented on a case-by-case basis.

While law and order and tough-on-crime approaches are common Republican campaign points, there is much disagreement between studies on whether capital punishment deters crime. The Republican Party's pro-life stance could be applied to capital punishment as well. Conservatives could also find support for abolishing capital punishment if the idea is proposed as a means of lowering government spending. While there is little data on how much it costs Missouri to continue executions, studies in other states found that just having the death penalty as an option costs significantly more than only having life without parole. These costs can range from several hundred thousand to over a million dollars per capital case, which can add up to tens of millions of dollars per year in some states.<sup>99</sup> Bills are commonly proposed in the Missouri legislature to abolish capital punishment. HB 994 was referred to a committee in 2025 and is identical to a 2023 bill that would eliminate the death penalty.<sup>100</sup> Ultimately, with strong Democratic support and a reframing of abolishing the death penalty that embodies conservative principles, a bipartisan bill ending capital punishment could gain enough support to pass.

Due to concerns regarding flaws in how the death penalty is implemented, governors in other states have issued moratoria on executions.<sup>101</sup> Although this does not abolish the practice of capital punishment, it effectively prevents any further executions from taking place. A moratorium in Missouri is currently unlikely considering the current governor did not intervene

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<sup>98</sup> *Missouri Voters Show Strong Bipartisan Support for Clemency in Lance Shockley Death Penalty Case*, UC Irvine Sch. of Soc. Ecology (Oct. 3, 2025), <https://socialecology.uci.edu/news/missouri-voters-show-strong-bipartisan-support-clemency-lance-shockley-death-penalty-case>.

<sup>99</sup> BAUMGARTNER ET AL., *supra* note 27, at 292-95.

<sup>100</sup> HB 994, Mo. Senate, [https://www.senate.mo.gov/25info/BTS\\_Web/Bill.aspx?SessionType=R&BillID=18266708](https://www.senate.mo.gov/25info/BTS_Web/Bill.aspx?SessionType=R&BillID=18266708) (last visited Feb. 8, 2026).

<sup>101</sup> *Statements from Governors Imposing Moratoria on Executions*, Death Penalty Info. Ctr., <https://deathpenaltyinfo.org/stories/statements-from-governors-imposing-moratoria-on-executions> (last visited Feb. 8, 2026).

in Lance Shockley's execution. Capital punishment could also be abolished in Missouri by being found to be unconstitutional through either the state or federal court system. As previously mentioned, the U.S. Supreme Court effectively issued a moratorium on executions in the past after finding the arbitrary use of capital punishment to be unconstitutional in *Furman v. Georgia* in 1972, which commuted all death penalty sentences.<sup>102</sup> Given current public opinion on capital punishment, it is unlikely that Missouri would dramatically revise its capital punishment policy if a court found capital punishment to be unconstitutional in some forms.

A law passed by the Missouri legislature which would ban the use of capital punishment would be the most difficult to overturn, especially since court decisions can be overturned and a new governor could issue an executive order to stop a moratorium. Given the potential for bipartisan cooperation, the Missouri legislature should pursue such a policy, since capital punishment is clearly discriminatory, blatantly unconstitutional, and does not serve society's best interests.

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<sup>102</sup> McArdle, *supra* note 1, at 14.