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Press Contact:

Estelle Hebron-Jones, Director of Special Projects

Texas Defender Service

ehebron-jones@texasdefender.org

Twitter: @texasdefender

New Study: Texas’s Junk Science Law Systematically Fails to Provide Relief to Innocent People Convicted Based on False Forensic Evidence

Texas Defender Service Releases First-Ever Comprehensive Review of Decade-Old Junk Science Law; Not One Person Sentenced to Death Has Received Relief Under 11.073

(Austin, Texas, July 29, 2024) Texas’s ground-breaking law (11.073) has failed to fulfill its promise of relieving innocent people who were wrongfully convicted based on junk science, according to a new report released today by Texas Defender Service (TDS). [*An Unfulfilled Promise: Assessing the Efficacy of 11.073*](#) is the first systematic examination of Texas’s junk-science law, based on an analysis of more than 70 applications filed under the law since it was enacted ten years ago. Notably, the report finds that the Texas Court of Criminal Appeals (CCA) has *never* granted 11.073 relief to a person sentenced to death.

“No one should be forced to serve a prison sentence—or face the death penalty and be executed—because they were convicted based on unreliable forensic evidence. But the reality is that scores of innocent people are serving prison terms, or even facing execution, simply because their juries trusted forensic evidence—from DNA to fingerprints to ballistics—that was later found to be untrustworthy,” said Estelle Hebron-Jones, Director of Special Projects at Texas Defender Service and the lead author of the report. “A decade ago, the Texas Legislature took a revolutionary step forward for people who were wrongfully convicted based on flawed forensic evidence: It passed Texas Code of Criminal Procedure Article 11.073. The first statute of its kind in the United States, 11.073 created a pathway for people whose convictions were based on false forensic evidence to show those faults and ultimately secure their freedom. But the law has not yet lived up to its promise,” said Ms. Hebron-Jones.

On the ten-year anniversary of 11.073 in September 2023, TDS systematically examined 74 cases filed under Article 11.073 to assess whether the statute is fulfilling its powerful initial vision: to grant relief to innocent people who are incarcerated on the basis of flawed scientific evidence.

TDS found that, due to both shortcomings in 11.073's language and problematic interpretations of the law by the Texas Court of Criminal Appeals, 11.073 is not working to provide relief to innocent people convicted based on false or unreliable forensic evidence. In its report, TDS offers several recommendations to improve the law in order to protect people who were wrongfully imprisoned or sent to death row.

Core findings include:

- **The Statute Does Not Go Far Enough to Protect Innocent People Who Were Convicted Based on Junk Science**

At the heart of 11.073 is the Texas Legislature's recognition that an innocent person convicted based on flawed forensic evidence should be able to overturn their conviction if they can show (1) that the evidence was flawed and (2) that without this flawed evidence, the jury would have found them "not guilty."

But in practice, the Texas Court of Criminal Appeals (CCA) does not apply the legal standard in the actual statute. Instead, it usually only grants relief if a person can show evidence strong enough to eliminate any rational basis for their conviction, which places an impossibly high burden on innocent people convicted based on flawed forensic evidence.

- **The CCA Largely Restricts Relief to Cases Involving New DNA Evidence, Even Though Most Wrongful Convictions Are Based On Other Types of Flawed Forensic Evidence**

The CCA primarily grants relief in cases involving DNA evidence, ignoring many other cases involving false forensic evidence. DNA claims are significantly overrepresented in successful applications, constituting 73% of successful claims but only 43% of claims raised.

This is concerning because nationwide data shows that false DNA evidence is only involved in a relatively small number of wrongful convictions. Of the 3,470 exonerations in the U.S. since 1989, only 594 involved DNA evidence.

- **The CCA is Not Granting Relief to Death-Sentenced People Under 11.073**

The CCA has *never* granted 11.073 relief to a person sentenced to death, as compared to granting relief to 31% of people who seek relief and are serving non-death sentences. Of

the 25 applications filed by people sentenced to death, most—64%—were dismissed or denied by an order no longer than a page and with no substantive discussion. Applications from death-sentenced people constituted 34% of all applications filed. Given the historically high rates of exonerations in capital cases, the total failure of the CCA to grant 11.073 claims for death-sentenced people—compared to nearly a quarter of all other people—is especially concerning. The deadly consequences of this pattern are clear: People may be executed following convictions that rest on faulty science because they are unable to obtain relief under 11.073.

- **People Without Counsel are Functionally Barred from Meaningfully Seeking Relief Under 11.073**

People who represent themselves in their 11.073 applications are effectively denied access to relief under 11.073 due to their lack of legal counsel. Of the 74 applications filed and adjudicated between September 2013 and December 2023, 19 were filed by people without lawyers. Of those 19 people without lawyers, only one has ever been granted relief, a stark drop off from the 25% of people with counsel who receive relief.

- **Procedural Bars Prevent Large Numbers of 11.073 Applications from Being Considered on the Merits**

Despite having valid claims, many people who seek relief under 11.073 never receive consideration of their claims on the merits because of procedural issues. These barriers especially impact people sentenced to death and people without lawyers. Of the 74 applications filed, 28 were dismissed based on procedural bars. This pattern disproportionately affects people sentenced to death and people without lawyers, two particularly vulnerable groups, who combined make up 23 of 28 procedurally barred applicants, or 82%.

Judge Elsa Alcalá served on the Texas Court of Criminal Appeals from 2011 to 2018. “Texas Defender Service’s report impressively presents a comprehensive examination of the more than 70 cases involving the junk science statute that were decided by the Court of Criminal Appeals,” Judge Alcalá commented. “I agree with TDS’s conclusions that these decisions show how the court has unnecessarily limited the statute’s effectiveness.”

Gretchen Sween is a Texas attorney whose client, Robert Roberson, is facing execution based on the debunked “shaken baby” hypothesis. “That a person could be executed based on a hypothesis that was never validated and that no legitimate medical expert would endorse today is unthinkable,” said Ms. Sween. “And yet it seems that the unthinkable is about to happen to Robert Roberson. The state law that should be preventing this travesty has just not worked in practice.”

Mike Ware is the Executive Director of the Innocence Project of Texas. “Historically, Texas has been a leader in establishing pathways for innocent people to challenge their convictions and restore their freedom,” said Mr. Ware. “By enacting Article 11.073 more than ten years ago, Texas became the first state in the nation to provide an avenue to free innocent people based on flawed forensic evidence. But as Texas Defender Service’s study shows, there are still gaps that need to be addressed. We need the Texas Legislature to improve the law and deliver on 11.073’s truly groundbreaking vision.”

TDS recommends reforms that the Texas legislature can enact to ensure that 11.073 does more to protect innocent people convicted based on junk science:

- **Revise the standard of relief** under 11.073 to make it more effective in protecting people convicted based on flawed forensic evidence.
- **Amend 11.073 to include penalty-phase relief** to ensure that people are not unfairly disadvantaged by problematic scientific evidence at any stage of trial.
- **Expand access to counsel for indigent people seeking relief from their wrongful convictions** so that no innocent person is denied the opportunity to obtain relief from their wrongful conviction because they cannot afford a lawyer.
- **Implement discretionary review by the Texas Court of Criminal Appeals** in order to streamline the review process and provide trial courts with greater responsibility in evaluating 11.073 claims.
- Mandate that **the Texas Court of Criminal Appeals explain why it has dismissed or denied a claim under 11.073** so that the legislature can continue to monitor and understand how the statute is being applied.

Read the Full Report at <https://www.texasdefender.org/wp-content/uploads/2024/07/TDS-11.073-Report.pdf>.

Texas Defender Service is a nonprofit based in Houston and Austin, Texas, that fights for the end of mass incarceration and excessive punishment in Texas through direct representation, policy reform, and public education. For more on Texas Defender Service, visit www.texasdefender.org.