

Texas Death Penalty Developments in 2016: The Year in Review

Executive Summary

The Texas Coalition to Abolish the Death Penalty (TCADP) – a statewide advocacy organization based in Austin, Texas – publishes this annual report to inform citizens and elected officials about issues associated with the death penalty during the past year.

The report cites these recent death penalty developments in Texas:

- In 2016, new death sentences remained at their lowest level since the U.S. Supreme Court upheld the state's revised capital punishment statute in 1976. Jurors condemned three individuals to death, but rejected the death penalty in a fourth case.
- Application of the death penalty remains racially biased. Over the last five years, 80% of death sentences have been imposed on people of color.
- Use of the death penalty also remains geographically isolated. Just seven counties account for approximately two-thirds of all new death sentences in Texas since 2012.
- For the second consecutive year, there were no new death sentences in Harris or Dallas Counties.
- The State of Texas put seven people to death in 2016, the lowest number of executions in two decades. Texas accounted for more than one-third of all U.S. executions.
- Of the seven men put to death by the State of Texas in 2016, two were Hispanic and five were white. It was the first time since 1984, and only the second year since the resumption of executions in 1982, that no African-Americans were executed in Texas.
- Nearly half of the individuals executed by the State of Texas over the last two years had a significant impairment. This includes one individual with intellectual disabilities, one with severe mental illness, and six men who were under the age of 21 at the time of their crimes; one individual who was 19 at the time of the crime also suffered from severe mental illness.
- The Texas Court of Criminal Appeals stayed seven executions and remanded several other cases for consideration of claims related to faulty forensic science and prosecutorial misconduct, among other issues.
- Since 2012, a total of 26 individuals have been removed from death row in Texas for reasons other than execution.
- The U.S. Supreme Court considered two death penalty cases from Texas during its October Term 2016; both cases originated in Harris County.

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Texas Death Penalty Developments in 2016: The Year in Review is available online at www.tcadp.org. Contact TCADP Executive Director Kristin Houlé at khoule@tcadp.org to receive a copy directly by email.

Introduction

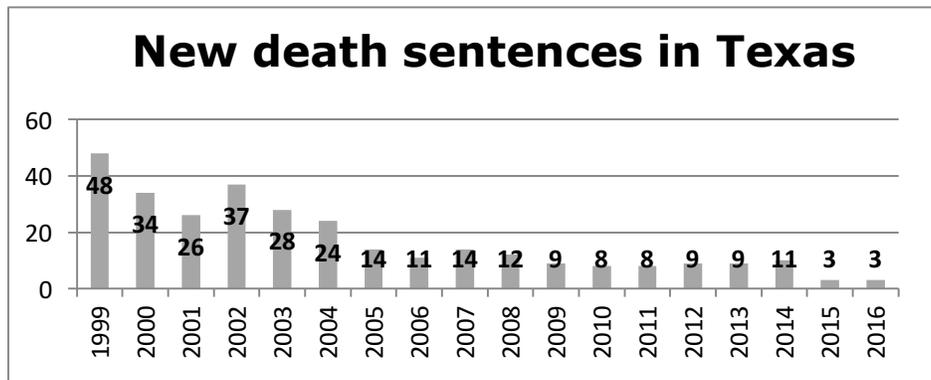
The death penalty landscape has shifted dramatically in Texas over the last 15 years, mirroring national trends. Death sentences have dropped from a peak of 48 new death sentences in 1999 to the fewest sentences on record for the second consecutive year. While Texas remained one of the nation's most active death penalty states, the number of executions carried out this year was the lowest in two decades.

This report presents information on new death sentences, executions, and stays; reduced sentences; judicial developments; public opinion; and other issues affecting the administration of justice in Texas.

Death Sentences

New Death Sentences

In 2016, new death sentences remained at their lowest number since the U.S. Supreme Court upheld Texas' revised capital punishment statute in 1976. Juries condemned three individuals to death, according to data compiled from media sources and the Texas Department of Criminal Justice (TDCJ).¹ Death sentences peaked in 1999, when juries sent 48 people to death row.



For only the second time in the last 10 years, no one was resentenced to death in Texas in 2016.

Death Sentences by County

A total of 19 Texas counties imposed death sentences in the last 5 years; of these, only 6 counties have done so in the last 2 years.² In 2016, Kaufman, Tarrant, and Webb Counties were responsible for the three new death sentences:

¹ Mark Anthony Gonzalez was received on death row in 2016. A Bexar County jury sentenced him to death in October 2015 but the judge conducted a competency hearing before finalizing the sentence in January of this year. His death sentence is counted as part of the total for 2015.

² View maps of new death sentences by county from 2012 to 2016 at <http://tcadp.org/get-informed/death-sentences-by-county/2012-2016-new-death-sentences/> and from 1974 to 2016 at <http://tcadp.org/get-informed/death-sentences-by-county/1974-2016-county-map/>.

- On May 5, 2016, a Webb County jury sentenced Demond Bluntson to death; it was the first death sentence in Texas this year and the first in Webb County in 25 years.³ Bluntson was convicted of the 2012 shooting deaths of his 21-month-old son, Devian, and his girlfriend's 6-year-old son, Jayden Thompson. According to the *Texas Tribune*, the jury deliberated for twelve hours over two days before handing down the sentence.⁴
- A Kaufman County jury sentenced Charles Brownlow to death on May 20, 2016. He was convicted of capital murder for the October 28, 2013 slaying of store clerk Luis Gerardo Leal-Carillo in Terrell, Texas during a killing spree that also took the lives of his mother, Mary Brownlow; his aunt, Belinda Young Walker; Kellee Lynette Pratt Sluder; and Jason Michael Wooden. The jury was not persuaded by testimony presented by the defense that Brownlow is intellectually disabled and suffers from psychiatric problems. It cost Kaufman County approximately \$475,000 for expert witness testimony alone.⁵
- A Tarrant County jury sentenced Amos Wells III to death on November 18, 2016. He was convicted of killing his pregnant girlfriend, Chanice Reed, 22; her mother, Annette Reed, 39; and her 10-year-old brother, Eddie McCuin, on July 1, 2013 in Fort Worth. Wells refused to allow his attorneys to present any evidence during the conviction phase of his trial.⁶

The following seven counties – which constitute less than 3% of all 254 counties in Texas – account for approximately two-thirds of all new death sentences since 2012.

Texas' Highest Death Sentencing Counties Since 2012							
	2012	2013	2014	2015	2016	Total 2012-2015	Total Since 1974
Harris	0	1	4	0	0	5	294
Dallas	2	3	0	0	0	5	107
Tarrant	2	0	1	0	1	4	74
McLennan	1	1 ⁷	1	0	0	3	18
Smith	1	0	0	1	0	2	24
Brazos	1 ⁸	0	0	1	0	2	17
Kaufman	0	0	1	0	1	2	3
Total	7	5	7	2	2	23	537
All TX Counties	9	9	11	3	3	35	1,095

³ Webb County juries have sentenced two other individuals to death but both were later removed from death row.

⁴ "Webb County Sees Rare Death Sentence, *Texas Tribune*, May 5, 2016

⁵ "Kaufman County left with \$475K tab after mass murder trial," WFAA, July 26, 2016

⁶ "Death sentence for Fort Worth man who killed pregnant girlfriend, 2 others," *Fort Worth Star-Telegram*, November 18, 2016

⁷ The Texas Court of Criminal Appeals reversed this conviction and death sentence on December 7, 2016. See page 16 of this report for details.

⁸ Stanley Griffin was removed from death row this year. See page 13 for details.

Among the highest death sentencing counties in Texas, there were several noteworthy developments in 2016:

- For the second consecutive year, jurors in Harris and Dallas Counties did not sentence anyone to death in a new case. Prosecutors in those counties did not try any cases involving the death penalty in 2016.
- The punishment handed down to Amos Wells III in November 2016 was the first new death sentence imposed by a Tarrant County jury since May 2014. A death-qualified jury rejected the death penalty for Gabriel Armandariz in his 2015 trial.

Both Harris and Dallas Counties were cited as “outlier counties” in a two-part report from the Fair Punishment Project at Harvard Law School. *Too Broken to Fix: An In-depth Look at America’s Outlier Death Penalty Counties*, released in August and October 2016, examines how the death penalty is operating in the handful of counties across the country that are still using it. The report highlights the extreme geographic isolation of the death penalty: of the 3,143 counties or county equivalents in the United States, only 16 — or one half of one percent — imposed five or more death sentences between 2010 and 2015.

Examining 10 years of court opinions and records from 16 “outlier counties” in 7 states (Alabama, Arizona, California, Florida, Louisiana, Nevada, and Texas), *Too Broken to Fix* analyzes all of the new death sentences handed down in these jurisdictions since 2010. It finds that these counties are plagued by persistent problems of overzealous prosecutors, ineffective defense lawyers, and racial bias. Such systemic problems have led to the conviction of innocent people and the imposition of excessively harsh punishments on people with significant impairments, including those with intellectual disabilities or severe mental illnesses.

The two Texas counties cited in the report – Harris and Dallas – together have sent more than 400 people to death row since 1974 and account for 181 executions.

Death Sentences by Race

All three men sentenced to death in Texas this year are African-American. Over the last five years, 80% of death sentences have been imposed on people of color; more than 60% of these death sentences were imposed on African-American defendants.

New Death Sentences by Race of Defendant						
	2012	2013	2014	2015	2016	Total Sentences by Race
African-American	7	7	5	0	3	22
Hispanic	1	1	2	1	0	5
Asian	0	0	0	1	0	1
Total People of Color	8	8	7	2	3	28
White	1	1	4	1	0	7
Total Sentences	9	9	11	3	3	35

In Texas' highest sentencing counties, these patterns of racial bias are even more pronounced:

- Fifteen of the last eighteen defendants sentenced to death in Harris County are African-American and the other three are Hispanic. Jurors rejected the death penalty in two other trials involving Hispanic defendants (one in 2008 and one in 2015). The last death sentence sought and imposed on a white defendant in Harris County came in November 2004, when serial killer Anthony Shore was sent to death row.
- All nine men sentenced to death in Dallas or Tarrant County since 2012 are African-American.

While African-Americans comprise only 12.5% of the population of Texas, they constitute 43.8% of death row inmates, according to TDCJ. Hispanics comprise 27.3% of individuals on death row (38.6% of the population of Texas), and whites comprise 26.9% (43.5% of the Texas population).⁹

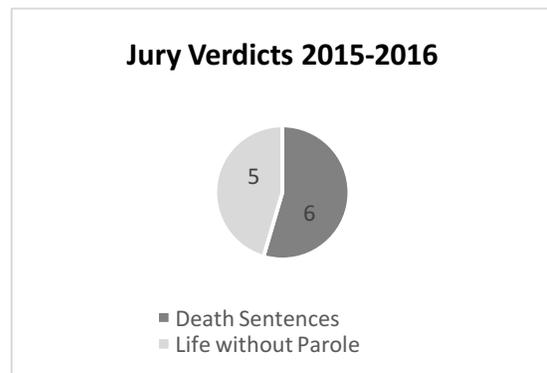
As of November 2, 2016, TDCJ counted 242 death row inmates, which includes 6 women. This remains the smallest Texas death row population since 1987. More than one-third of these individuals were convicted in Harris County.¹⁰ Texas has the third-largest death row population in the nation, after California (750) and Florida (384). Texas' death row population peaked in 2000, when more than 450 individuals were awaiting execution.

Jury Rejections

Over the last two years, juries have rejected the death penalty in nearly as many cases as they imposed it. There was one rejection by a death-qualified jury in 2016:

- On June 15, 2016, a jury in Bell County deadlocked in its deliberations on whether to sentence David Risner to death for the 2014 murder of Little River-Academy Police Chief Lee

Dixon. Risner, a former police officer, was convicted of capital murder on June 6. He was sentenced to life in prison without the possibility of parole after a two-month long trial. According to the *Texas Tribune*, "both prosecutors and defense attorneys agreed that Risner suffered from post-traumatic stress disorder and a traumatic brain injury" after spending time in Iraq during the war on a contract job.¹¹ It was the first death penalty trial in Bell County since 2007.



⁹ See http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html for more information.

¹⁰ TDCJ counts 83 inmates from Harris County as of November 2, 2016.

¹¹ "Texas Man Escapes Death Sentence in Police Chief's Murder," *Texas Tribune*, June 15, 2016

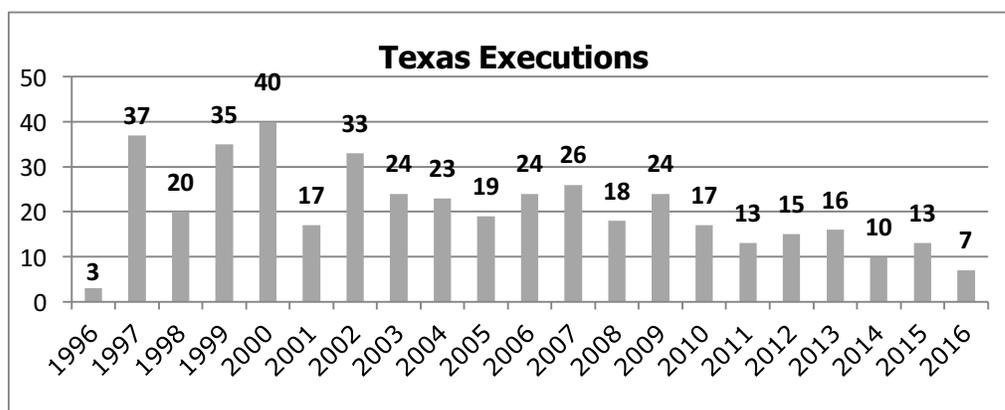
Last year, juries rejected the death penalty in four capital murder cases. They imposed three new death sentences statewide. Since 2010, death-qualified juries have rejected the death penalty in at least 19 capital murder trials in Texas.

Executions

The State of Texas executed seven people in 2016, the lowest number of executions in two decades. There was an unusual six-month gap in executions, from April 6 to October 5, 2016.

Texas accounted for more than one-third of all U.S. executions (7 out of 20), but, for the first time since 2002, it was not the nation’s busiest execution chamber.¹² A total of five states were responsible for all executions carried out this year.

U.S. Executions in 2016	
Georgia	9
Texas	7
Alabama	2
Florida	1
Missouri	1
Total	20



The State of Texas has executed a total of 538 people since 1982; 279 of these executions occurred during the administration of former Governor Rick Perry (2001-2014), more than any other governor in U.S. history. Executions peaked in Texas in 2000, when 40 people were put to death.

Several of the men executed in 2016 were barely legal adults at the time of their crimes. Gustavo Garcia was 18 years old at the time of the offense, while Pablo Vasquez was 20 years old. A 2005 ruling by the U.S. Supreme Court prohibits the death penalty for those under age 18 at the time of the crime.¹³ The State also put to death individuals with evidence of severe mental illness, as well as someone who waived his appeals.

Nearly half of the individuals executed by the State of Texas over the last two years had a significant impairment. This includes one individual with intellectual disabilities, one with severe mental illness, and six men who were under the age of 21 at the time of their crimes; one individual who was 19 at the time of the crime also suffered from severe mental illness.

¹² In 2014, Texas and Missouri each carried out 10 executions, the highest number in the nation that year.

¹³ *Roper v. Simmons*, 543 U.S.551 (2005)

Of those executed, James Freeman served only eight years on death row, while Coy Westbrook served 18 years and Gustavo Garcia served 24 years. The average amount of time spent on death row for all of the men executed in 2016 was 14.5 years.

- The State of Texas carried out its first execution of the year on January 20, putting Richard Masterson to death for the 2001 murder of Darin Honeycutt in Houston. The Texas Court of Criminal Appeals and the U.S. Supreme Court denied his requests for a stay of execution. One of those appeals challenged the constitutionality of a new Texas law that conceals the identity of any person or entity providing the drugs used in lethal injections. The law was passed by the 84th Texas Legislature and went into effect on September 1, 2015.

Other appeals challenged the testimony of medical examiner, Paul Shrode, who conducted an autopsy of Honeycutt and declared his cause of death to be strangulation. Masterson's attorney, Gregory Gardner, argued that Honeycutt died of a heart attack. Shrode was disciplined by the Harris County Medical Examiner's Office for wrongly determining a cause of death the same year he conducted Honeycutt's autopsy. In 2010, Shrode was fired from his position as El Paso County Chief Medical Examiner after a death row inmate in Ohio was granted clemency when issues related to Shrode's testimony in the case came to light.

- On January 27, the State of Texas executed James Freeman for the murder of Game Warden Justin Hurst after a police chase in 2007 in Wharton County. Freeman's 2008 trial was the first death penalty case in Wharton since 1979, and he was the first person from that county to be executed. Freeman's lawyers argued that their client did not have a history of violence and did not pose a "future danger," the first issue jurors in Texas capital murder trials must address when considering whether to impose the death penalty.
- On February 16, the State of Texas put Gustavo Garcia to death for the robbery and murder of Craig Turski in Plano (Collin County) in 1990. Garcia, who was 18 years old at the time of the crime, spent more than 24 years on death row. He received a new sentencing hearing in 2000 after then-Texas Attorney General John Cornyn discovered that psychologist Walter Quijano had testified at Garcia's original sentencing trial that Hispanics were more likely to pose a future danger to society. Quijano said he came to that belief because Hispanics were overrepresented in the prison population.

Garcia and five other individuals whose death sentences had been influenced by Quijano's improper testimony were granted new sentencing trials. Garcia was again sentenced to death in 2001, according to the Attorney General's office. See U.S. Supreme Court Developments on page 17 for information about the death penalty case of Duane Buck, in which Dr. Quijano also provided race-based testimony.

- Adam Ward was put to death on March 22 after the U.S. Supreme Court rejected his appeal for a stay of execution. Ward's attorneys argued he should be exempt from execution based on evidence of his severe mental illness. He was convicted of killing Commerce Code Enforcement Officer Michael "Pee Wee" Walker in 2005 in Hunt County. Ward was 22 years old at the time of the crime; he had a long, documented history of mental health issues.

Although state and federal courts acknowledged Ward's mental illness, they still deemed him eligible for the death penalty.

- On October 5, Barney Fuller was put to death for the 2003 murders of his neighbors, Nathan and Annette Copeland, in Houston County. Fuller pled guilty to the crime and waived further appeals in his case, ordering his attorneys not to file any additional legal challenges. In June, a federal judge deemed him competent to drop his appeals. Fuller was 58 years old. It was the first time an individual convicted in Houston County was put to death.

According to the Death Penalty Information Center, 144 people – including 30 individuals in Texas – have been executed in the United States after giving up their appeals. This represents just under 10% of U.S. executions since 1977.

See Table 2 on page 20 for a list of all individuals put to death in 2016.

Executions by Race

Of the seven men put to death by the State of Texas in 2016, two were Hispanic and five were white. It was the first time since 1984 – and only the second year since the resumption of executions in 1982 – that no African-Americans were executed in Texas. Since 1982, the State of Texas has executed 236 individuals who were white, 197 who were African-American, 101 who were Hispanic, and 4 who had another racial identity.

Collectively, five of the executions in 2016 involved cases with white victims, one involved a Hispanic victim, and one involved the murders of a white female and a Hispanic male.¹⁴ In total, 377 executions in Texas involved cases with white victims, 87 involved Hispanic victims, and 72 involved African-American victims. Two executions involved victims from another race/ethnic group.

Executions by County

Harris County accounted for two executions this year. Collin, Hidalgo, Houston, Hunt, and Wharton each were responsible for one execution. Harris County alone accounts for 126 executions, more than any state except Texas. Dallas County accounts for 55 executions, and Bexar County accounts for 42.

Nine executions already have been scheduled for the first half of 2017. Eight involve cases from North Texas, including four from Tarrant County, three from Dallas County, and one from Collin County.

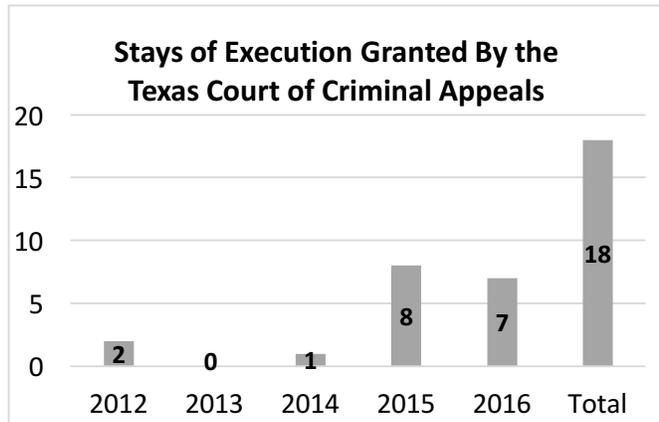
¹⁴ Coy Westbrook was executed for the murders of one white female and one Hispanic male.

Stays of Execution and Dates Withdrawn

A total of 12 individuals scheduled for execution in 2016 received reprieves, including stays granted by the courts and the withdrawal – and, in some cases, rescheduling of – execution dates.

Stays of Execution

Seven stays of execution came from the Texas Court of Criminal Appeals (CCA), the state’s highest criminal court, while one came from a federal court. Four of these cases involve white defendants, two involve Hispanic defendants, and one involves an African-American defendant. Last year, the CCA granted eight stays of execution.



- On May 27, the CCA granted a stay of execution to Charles Flores, who was scheduled to be put to death on June 2 for the 1998 murder of Elizabeth Black in Dallas County. Flores’ conviction hinged largely on an eyewitness who police hypnotized and whose testimony placed him at the crime scene. No physical or DNA evidence connected Flores to the crime. Flores, who is Hispanic, has spent more than 17 years on death row. The co-defendant in the case, Richard Childs, who is white, pled guilty to murder and was recently paroled after serving 17 years of a 35-year-sentence. The CCA sent Flores’ case back to the trial court to examine the use of hypnosis.
- On June 16, the CCA granted a stay of execution to Robert Roberson, who was scheduled to be put to death five days later for the 2002 murder of his daughter in Anderson County. Roberson’s attorneys argued that his conviction was based on junk science. The CCA sent the case back to the trial court to examine new scientific findings regarding Shaken Baby Syndrome. Roberson, who has consistently maintained his innocence, said his daughter’s death was related to an injury she sustained after falling out of her bed.
- The CCA stayed the execution of Robert Pruett on August 11 pursuant to the pending appeal of DNA proceedings in his case. Pruett was scheduled to be executed on August 23 despite significant doubts about the reliability of his conviction. He has steadfastly maintained his innocence in the murder of Corrections Officer Daniel Nagle in the McConnell Unit in Beeville, Texas in 1999. No physical evidence connects him with the crime, and recent DNA analysis of the murder weapon revealed a DNA profile belonging neither to Pruett nor to Officer Nagle. The State still has not analyzed the profile found on the murder weapon, which could reveal the identity of the real killer. In addition, a 2015 order to analyze the clothing worn by Officer Nagle on the day of his death also has not been fulfilled.

Pruett has received three other stays of execution to allow time for DNA testing, and an earlier execution date of April 27, 2016 also was modified. The execution is stayed until further order of the Court.

- On August 19, the CCA stayed the execution of Jeff Wood and remanded his case to the trial court for consideration of his claims related to false testimony during the sentencing phase of his original trial. Wood was scheduled to be executed on August 24 even though he did not kill anyone. He was convicted of capital murder and sentenced to death under Texas' "law of parties" after another man, Daniel Reneau, robbed and killed convenience store clerk Kris Keeran in Kerrville in 1996. Reneau, who was executed in 2002, committed the crime while Wood was sitting in a truck outside the building.

On August 2, 2016, Wood's attorneys filed a petition for writ of habeas corpus requesting a new sentencing hearing based on the fact that his original sentencing hearing was prejudiced by the false and misleading testimony of discredited psychiatrist, Dr. James Grigson. According to the petition, during the trial, Dr. Grigson testified – without personally evaluating him – that Wood "certainly" would be criminally violent in the future based on a hypothetical given to him by the prosecution. A jury determination of future dangerousness is required in order to sentence a defendant to death in Texas.

In 1995, three years before he testified in Wood's trial, Dr. Grigson was expelled from the American Psychiatric Association and the Texas Society of Psychiatric Physicians for flagrant ethical violations involving this same conduct.

- The CCA stayed the execution of Rolando Ruiz, who was scheduled to be executed on August 31 (an earlier execution date in July had been reset). It was the third stay granted by the CCA in August. Ruiz's appeal questioned the effectiveness of his trial counsel and his initial habeas counsel. The appeal also questioned the constitutionality of executing him more than 20 years after his conviction. The Court lifted the stay on November 9 after declining to authorize a subsequent application for writ of habeas corpus in Ruiz's case.
- On September 2, the CCA stayed the execution of Robert Jennings. Scheduled to be executed on September 14, Jennings has spent more than 25 years on death row for the murder of Houston Police Department Vice Officer Elston Howard during an attempted robbery in 1988. The Court offered no reason for stopping the punishment, saying only that it should be halted "pending further order of this Court."
- The CCA stayed the execution of John Battaglia on December 2. Battaglia was originally scheduled to be executed on March 30, 2016 for the 2001 murders of his two daughters, Faith and Liberty, ages 9 and 6, in Dallas County. The 5th U.S. Circuit Court of Appeals granted a stay just hours before his execution that day in order to give his attorneys more time to develop claims their client may be mentally incompetent for execution.

Battaglia's execution was reset for December 7, and a competency hearing took place in Dallas in November. Despite expert testimony from three psychologists who evaluated

Battaglia and determined he is not fit to be executed due to a delusional disorder, State District Judge Robert Burns ruled on November 18 that Battaglia has enough understanding of his case and his impending execution to be considered mentally competent. The CCA determined, however, that a full briefing on the appeal is warranted in this case and ordered both sides to file briefs on the competency issue within 60 days. Battaglia’s execution was stayed pending further order from the Court.

Execution Dates Withdrawn

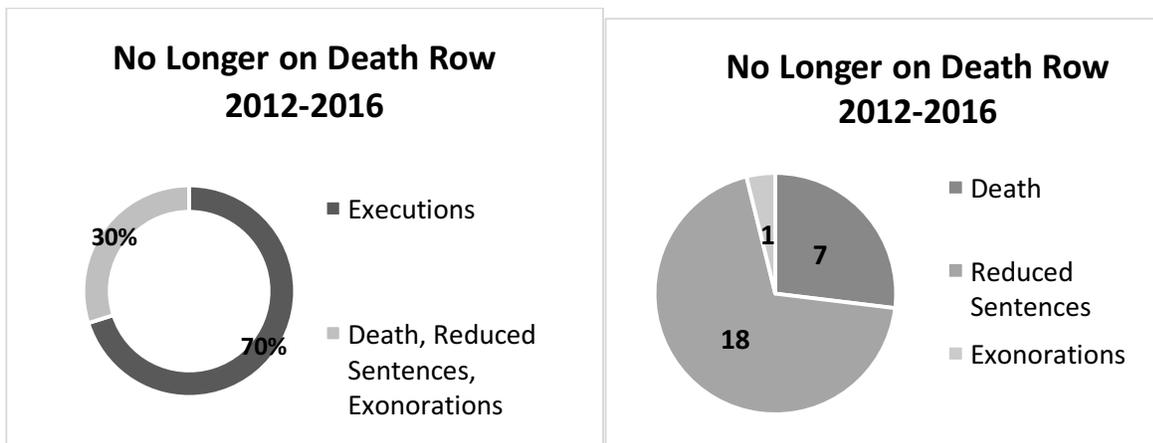
State trial courts modified or withdrew the execution dates set for six individuals in 2016. As noted above, several of these dates were rescheduled but then stayed by the CCA or withdrawn/modified again.

- The May 11 execution date for Terry Edwards was modified to October 5 and then rescheduled for January 26, 2017.
- On July 6, a Texas state district judge withdrew the execution order for Perry Eugene Williams, who was scheduled to be put to death on July 14 for the 2000 murder of Houston medical student Matthew Carter. Williams’ execution was delayed indefinitely after state officials failed to provide testing results for the purity of lethal injection drugs. According to state officials, this was the first time an execution was postponed for this reason. The state had agreed to test the purity of the drugs to settle a lawsuit involving Williams and another individual on death row, Thomas Whitaker. This was Williams’ second stay of execution. In September 2015, his execution date was withdrawn to appoint new attorneys to his case.

Reduced Sentences and Individuals No Longer on Death Row

Five individuals received reduced sentences and were removed from death row in 2016. Two other individuals died while still in prison.

Since 2012, a total of 26 individuals have been removed from death row in Texas due to reduced sentences (18), deaths in custody (7), or exonerations (1). Half of these cases originated in Harris County. During this same time period, the State executed 61 people.



Reduced Sentences

The following individuals received reduced sentences in 2016 and were removed from death row; collectively, they spent 84 years on death row.

- On January 27, the Texas Court of Criminal Appeals (CCA) determined that Stanley Griffin should receive a new punishment hearing after finding there was not enough evidence to support the charge of capital murder. Griffin was sentenced to death in Brazos County for the 2010 murder of Jennifer Hailey. He now will face five years to life in prison for the crime; his case has been remanded to Brazos County.
- The death sentence of Christian Olsen was commuted to life in prison without parole and he was removed from death row on February 2. Olsen, now 28, was convicted and sentenced to death in 2009 for killing his neighbor, 68-year-old Etta Jean Westbrook, in Bryan two years earlier. The CCA overturned his death sentence in 2012. Prosecutors opted not to seek another death sentence because of new details that had emerged in the case. According to a news release from the Brazos County District Attorney's Office, several items of biological evidence had been mishandled by the court reporter.¹⁵ Also, a key witness – Olsen's girlfriend, who was 20 years older than him – committed suicide in jail in May 2015.
- Hector Garcia was resentenced to life in prison on February 4 after the CCA overturned his punishment. He was convicted of killing a 14-year-old boy during a convenience store robbery in Edinburg in 1987. Garcia was tried and convicted in 1990 and spent more than 25 years on death row.
- Roger McGowen was removed from death row on April 13 after his sentence was reduced to life. He was convicted of killing 67-year-old Marion Pantzer during a bar robbery in Houston in 1986, and he spent 29 years on death row. The U.S. Court of Appeals for the Fifth Circuit ordered a new punishment trial for McGowen in 2012 after determining that jurors were not afforded the opportunity to properly consider mitigating evidence in his case. An earlier ruling by the U.S. Supreme Court in the case of Johnny Paul Penry determined that jurors must have an opportunity to consider mitigating evidence in the punishment phase of death penalty trials. According to the *Houston Chronicle*, this brought almost 20 cases back to Harris County for reconsideration.¹⁶
- Jose Martinez was removed from death row on July 11 after the CCA agreed with a trial court's findings that he is intellectually disabled and thereby ineligible for the death penalty. The Court reduced his sentence to life in prison. He was convicted of killing 68-year-old Esperanza Palomo and her 4-year-old granddaughter, Amanda, during a 1995 burglary at her home in Mission in Hidalgo County. Martinez was 18 years old at the time. He spent more than 19 years on death row.

¹⁵ "Bryan man originally given death penalty is resentenced to life in prison," WTAW, February 3, 2016

¹⁶ "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014

He is at least the 15th person to be removed from death row in Texas since 2002 in accordance with the U.S. Supreme Court decision *Atkins v. Virginia*, which prohibits the death penalty for persons with intellectual disabilities.

Deaths in Prison

- Jack Smith died of natural causes at the Estelle Unit on April 8 at the age of 78. He was the oldest person on death row in Texas, and one of the state's longest-serving death row inmates. Smith was sentenced to death in 1978 for shooting Roy A. Deputter, who was trying to stop him from robbing a Houston convenience store. His accomplice, Jerome L. Hamilton, received a life sentence and testified against Smith. Smith was buried in the Texas Department of Criminal Justice's Captain Joe Byrd Cemetery after his body went unclaimed. According to the *Associated Press*, only three people still on death row have been there longer.
- Max Soffar, who spent 35 years on Texas' death row, died of complications from liver cancer on April 24. The U.S. Court of Appeals for the Fifth Circuit was scheduled to hear oral argument in his case, including evidence that might have overturned his conviction, just two days later. He was 60 years old.

No physical evidence connected Soffar to the murders of three people in a bowling alley in Houston in 1980. He also bore no resemblance to the description of the perpetrator provided by eyewitness and surviving victim, Greg Garner. Soffar's conviction and death sentence hinged solely on a confession he gave to police – one of three inconsistent statements he provided after three days of intense interrogation. According to the National Registry of Wrongful Convictions, false confessions have played a role in 12% of exonerations nationwide. Substantial evidence pointing towards an alternative suspect, Paul Dennis Reid, was never considered by a jury.

Soffar's attorneys from the ACLU and the law firm Kirkland Ellis asked the Texas Board of Pardons and Paroles to recommend then-Governor Rick Perry commute Soffar's death sentence so that he could live his final days at home. Many prominent individuals, including former district attorneys, judges, faith leaders, former Texas Governor Mark White, and former FBI Director William S. Sessions supported Soffar's clemency petition. The Texas Board of Pardons and Paroles denied the petition, citing the absence of an execution date.

Wrongful Convictions

On April 7, 2016, Texas State Comptroller Glenn Hegar rejected Alfred Dewayne Brown's application for \$2 million in compensation for the decade he spent on death row as an innocent man. According to the *Houston Chronicle*, "Hegar said Brown's claim does not meet the mandatory requirements under Texas law because he has never been formally determined to be 'actually innocent'... ." ¹⁷ Brown was released from prison in June 2015 after the Harris County District Attorney's Office dismissed all charges against him. His attorneys plan to appeal

¹⁷ "Comptroller: Former death row inmate not eligible for exoneration funds," *Houston Chronicle*, April 7, 2016

the Comptroller's decision. Brown is the 13th person to be exonerated from death row in Texas. Nationwide, 156 people have been exonerated from death rows since 1973.

Other Case Developments

There were significant developments in several other death penalty cases in 2016:

- In April, a Brazos County judge deemed Marcus Druery incompetent to be executed due to evidence of his severe mental illness, which prevents him from understanding why he is being punished. Prosecutors did not contest the decision. The court left the option open for Druery to be re-examined in the future if his mental health status changes. He faced imminent execution in 2012 before receiving a stay from the Texas Court of Criminal Appeals (CCA).
- In June, prosecutors in Smith County dropped capital murder charges against Kerry Max Cook in light of new evidence that severely undermined the case against him – namely, the false testimony of the victim's married lover. Convicted of killing Linda Jo Edwards in 1977 in Tyler, Cook spent 20 years on death row. Facing a fourth death penalty trial in 1999, he accepted an Alford plea (no-contest plea) and was released from prison. Cook has consistently maintained his innocence.

Prosecutors in Smith County announced that they planned to oppose Cook's claim of actual innocence, which, if granted, would allow him to receive compensation for the two decades he spent on death row. The CCA ultimately will decide whether to grant Cook's innocence claim and fully dismiss the charges.

- On June 15, the CCA issued a ruling in the case of Julius Murphy, who was sentenced to death for the 1997 killing of 26-year-old Jason Erie in Bowie County. The CCA, which granted Murphy a stay of execution on October 12, 2015, remanded his case to the district court in Bowie County to resolve two issues: 1) did the District Attorney's Office "fail to disclose threats of prosecution and promises of leniency to the State's two main witnesses" and 2) did the State "unknowingly present false testimony through one of these witnesses."

Judge Elsa Alcalá, who was appointed to the CCA in 2011 by then-Gov. Rick Perry, agreed with the decision to order a lower court to consider overturning Murphy's conviction. In a dissenting opinion, however, she challenged the Court's rejection, without elaboration, of Murphy's contention that "evolving standards of decency" show the death penalty should be deemed unconstitutional. See more in *New Voices* on page 18.

- A post-conviction hearing took place this summer in Houston in the case of Linda Carty. Carty, a British citizen and native of the Caribbean island of St. Kitts, was sentenced to death for plotting the 2001 murder of her neighbor, Joana Rodriguez, in order to steal Rodriguez's newborn baby. The CCA ordered the hearing in February 2015 to review claims of prosecutorial misconduct in her case.

During the hearing, four witnesses testified that they were coerced and threatened by two Harris County prosecutors. The prosecutors also were accused of destroying case notes and emails and hiding at least 18 recorded witness statements from Carty's original defense team, charges they denied.

Galveston County District Judge David E. Garner presided over the hearing as a visiting judge. After considering all of the testimony, he ruled that the evidence was not sufficient to warrant a new trial for Carty. Judge Garner found that the evidence did not show that prosecutors knowingly used perjured testimony, failed to correct untrue testimony, or presented misleading testimony at trial.¹⁸ The CCA will review his ruling and make a final determination as to whether to grant a new trial.

- On June 29, the CCA ordered additional findings related to Rodney Reed's request for DNA testing on such items as the murder weapon. The Court halted Reed's March 5, 2015 execution date to consider new evidence that may establish his innocence in the 1996 murder of Stacey Stites in Bastrop County. According to the *Austin American-Statesman*, the Court ordered visiting Judge Doug Shaver to determine whether the items are in a condition that allows DNA testing, whether it is likely the items contain biological material that can be tested, and whether the chain of custody ensures that the items were not "substituted, tampered with, replaced or altered."¹⁹
- The CCA reversed the conviction and death sentence of Albert Love on direct appeal on December 7. The Court found that Love's text messages had been seized without a warrant and improperly admitted as evidence during his 2013 trial, and that the error was not harmless. Love was convicted and sentenced to death in 2013 for the murders of Kennan Hubert and Tyler Sneed two years earlier in Waco. He was the second of two men convicted in the shooting deaths. Love's trial was moved from McLennan to Williamson County due to media coverage of the earlier trial of co-defendant Ricky Cummings.

According to a report issued by Texas Defender Service on September 20, 2016, the CCA did not reverse a single conviction in a death penalty case on direct appeal from 2009 through 2015. In that six-year period, the CCA affirmed convictions and death sentences in 79 cases, and reversed death sentences in just three cases. The report, *Lethally Deficient: Direct Appeals in Texas Death Penalty Cases*, uncovers multiple deficits in capital direct appeal representation and calls for reform.²⁰

The Texas Court of Criminal Appeals remanded two cases for consideration of the merits on claims that the convictions were based on outdated science, under Article 11.073:

- On March 9, the CCA remanded the case of Rigoberto "Robert" Avila, Jr. to the trial court for further review of his claim that newly available scientific evidence in the field of biomechanics demonstrates he is likely innocent, and that false testimony from

¹⁸ "British woman on Texas death row should not get new trial, judge says," *The Guardian*, September 2, 2016

¹⁹ "State court wants additional answers in Rodney Reed appeal," *Austin American-Statesman*, June 29, 2016

²⁰ See <http://texasdefender.org/lethally-deficient-new-tds-report-texas-direct-appeal-process/>.

prosecution witnesses tainted his trial. Avila, who has spent 15 years on death row and faced multiple execution dates, was convicted of capital murder in El Paso in 2000 after the death of a 19-month-old child who, along with a four-year-old child, had been in his care. A full hearing on Avila's claims is expected to begin in February 2017.

- On March 23, the CCA remanded the case of Richard Vasquez to Nueces County for a review on the merits. The Court had granted a stay two days before his scheduled execution on April 23, 2015. In their appeal, Vasquez's attorneys contended new research on Shaken Baby Syndrome and head injuries debunks testimony from experts who appeared on behalf of the prosecution at his 1999 trial.

In the case of Garcia White, the CCA found that Article 11.073, which requires an applicant to show that "had the scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted," does not apply to the sentencing phase of a capital murder trial. Three justices dissented from the opinion, which was handed down on November 2.

Judge Bert Richardson concurred with the opinion but observed that

...this is a harsh result, particularly in a death penalty case where the jury is often asked to evaluate expert scientific testimony and scientific evidence in assessing whether the death penalty is the proper punishment. In my opinion, Article 11.073 should have been written to apply to both the guilt and punishment phases of a trial—at least a death penalty trial.²¹

Justices Hervey and Newell joined his concurrence.

U.S. Supreme Court Developments

The U.S. Supreme Court considered two death penalty cases from Texas during its October Term 2016; both cases originated in Harris County.

- On October 5, 2016, the Justices heard oral argument describing racial bias in the death penalty case of Duane Buck. Buck was condemned to death in Harris County in 1997 after his own trial attorneys inexplicably introduced testimony and a report from a psychologist, Dr. Walter Quijano, who stated that Buck was more likely to be dangerous in the future because he is black. Buck's attorney argued that the use of Quijano's testimony was in direct violation of Buck's right to effective representation.
- On November 29, 2016, the Court heard oral argument in *Moore v. Texas*, a case that addresses Texas's unscientific standard for determining whether a person is intellectually disabled and therefore exempt from execution. *Moore v. Texas* asks the Court to decide if it is unconstitutional for Texas "to prohibit the use of current medical standards on

²¹ <http://www.search.txcourts.gov/SearchMedia.aspx?MediaVersionID=ef477243-c245-484f-9402-7562e3cfd703&coa=coscca&DT=OPINION&MediaID=fd839276-203c-4eb0-a934-4fd38a4b2836>

intellectual disability, and require the use of outdated medical standards, in determining whether an individual may be executed.”

Bobby James Moore was convicted of killing a grocery store employee during a bungled robbery in Houston in 1980. He was 20 years old at the time of his conviction. The trial took place less than three months after the crime. Moore has faced two serious execution dates in his 35 years on death row.

Rulings in both cases are expected in 2017.

Public Opinion

On April 25, 2016, the Kinder Institute for Urban Research at Rice University released the results of its Houston Area Survey for 2016. According to the survey, just 27 percent of respondents think the death penalty, rather than life imprisonment, is the most appropriate punishment for first-degree murder, a drop from 39 percent in 2008. The survey report notes:

The recent revelations of discriminatory sentencing, innocent persons being freed from Death Row just before their scheduled executions, and botched lethal injections have been eroding support for capital punishment, and the costs of seeking the death penalty rather than life imprisonment have risen dramatically.²²

A national poll conducted by the Pew Research Center and released on September 29, 2016 revealed that 49% of Americans favor the death penalty for people convicted of murder, while 42% oppose it. Support for the death penalty dropped 7 percentage points since March 2015 and now stands at its lowest level in 40 years. Also, for the first time in decades, independents are as likely to oppose the use of the death penalty (45%) as they are to favor it (44%). The share of independents who support capital punishment has fallen 13 points since last year (from 57%).

New Voices

Texas Court of Criminal Appeals Judge

In a dissenting opinion issued in June in the case of Julius Murphy, Judge Elsa Alcalá of the Texas Court of Criminal Appeals questioned whether the death penalty is being applied fairly in Texas and should still be deemed constitutional. Citing racial disparities, excessive delays, and the risk of error, Judge Alcalá later told a reporter with the *Austin American-Statesman* that she believes “the public is not aware of the problems” with the death penalty.²³ Judge Alcalá also issued dissents in several other death penalty cases raising concerns about the integrity and fairness of past convictions.

²²http://kinder.rice.edu/uploadedFiles/Center_for_the_Study_of_Houston/53067_Rice_HoustonAreaSurvey2016_Lowres.pdf

²³ “Texas Appeals Court Judge voices doubts on death penalty,” *Austin American-Statesman*, June 17, 2016

Civic and Religious Organizations

This year, a number of religious and civic organizations adopted or reiterated positions calling for the abolition of the death penalty.

- In June, the National Hispanic Leadership Agenda, a bi-partisan coalition of 40 prominent Latino organizations, endorsed abolition of the death penalty as part of its Public Policy Agenda.
- In August, the National Hispanic Caucus of State Legislators (NHCSL) passed a resolution calling for the end of the death penalty in the United States. After reviewing the clear evidence of anti-Latino bias in the application of the death penalty, the high costs to taxpayers, and its ineffectiveness in reducing crime, Latino lawmakers called on Congress and all states and localities to immediately repeal the death penalty.
- Over the summer, the Rio Texas, Central Texas, and Northwest Texas Annual Conferences of the United Methodist Church passed resolutions at their annual gatherings reiterating support for the Church's longstanding opposition to the death penalty. All five United Methodist Conferences in Texas have passed similar resolutions over the last three years.
- Adopted at the 2016 State Convention, the Texas Democratic Party Platform retained its call for passage of legislation that would abolish the death penalty. Also, for the first time, the national 2016 Democratic Party platform endorsed abolition of the death penalty, saying "it has no place in the United States of America."

Conclusion

July 2, 2016 marked the 40th anniversary of the U.S. Supreme Court decision *Gregg v. Georgia* (1976), which upheld the newly crafted death penalty statutes of several states, including Texas, and paved the way for the resumption of executions. Four decades later, Texas remains one of the nation's most active death penalty states.

Use of the death penalty has declined significantly in recent years, however, as measured by both new death sentences and executions. Yet as the number of Texas counties devoting resources to costly death penalty trials dwindles each year, capital punishment remains racially biased and arbitrarily applied. The risk of wrongful convictions continues to undermine the fairness and accuracy of the system, while the cases of individuals scheduled for execution illustrate the deep flaws that still plague our state's capital punishment system.

TCADP urges concerned citizens and elected officials at the state and county levels to confront the realities of this irreversible punishment and reconsider the efficacy and cost of the death penalty as a means of achieving justice.

Table 1: New Death Sentences in 2016

Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
Wells	Amos	8/20/1990	M	Black	N/A	Tarrant	7/1/2013
Brownlow	Charles	09/16/1977	M	Black	05/23/2016	Kaufman	10/28/2013
Bluntson	Demond	11/25/1975	M	Black	05/10/2016	Webb	06/19/2012

Source: Texas Department of Criminal Justice and *Fort Worth Star-Telegram*

Table 2: Executions in 2016

Execution	Last Name	First Name	TDCJ Number	Age	Date	Race	County
538	Fuller	Barney	999481	58	10/05/2016	White	Houston
537	Vasquez	Pablo	999297	38	04/06/2016	Hispanic	Hidalgo
536	Ward	Adam	999525	33	03/22/2016	White	Hunt
535	Wesbrook	Coy	999281	58	03/09/2016	White	Harris
534	Garcia	Gustavo	999018	43	02/16/2016	Hispanic	Collin
533	Freeman	James	999539	35	01/27/2016	White	Wharton
532	Masterson	Richard	999414	43	01/20/2016	White	Harris

Source: Texas Department of Criminal Justice