

Texas Death Penalty Developments in 2017: 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 in the past year. The report cites these recent death penalty developments in Texas:

- In 2017, new death sentences hovered around their lowest level since the U.S. Supreme Court upheld the state's revised capital punishment statute in 1976. Juries condemned four individuals to death; three other cases in which prosecutors sought the death penalty resulted in sentences of life without the possibility of parole.
- For the third consecutive year, there were no new death sentences in Harris or Dallas Counties.
- Six counties account for more than half of all new death sentences imposed over the past five years.
- Application of the death penalty remains racially biased. Over the last five years, 70% of death sentences have been imposed on people of color.
- The State of Texas put seven people to death in 2017, matching 2016 for the lowest number of executions in two decades. Texas accounted for 30% of all U.S. executions.
- Of the seven men put to death by the State of Texas in 2017, two were Hispanic, two were African-American, and three were white.
- For the first time since 1985 – and only the third time since the resumption of executions in Texas on December 7, 1982 – Harris County did not account for any executions.
- In March, the U.S. Supreme Court ruled in *Moore v. Texas* that the state of Texas must use current medical standards for determining whether a person is intellectually disabled and therefore exempt from execution.
- The Texas Court of Criminal Appeals stayed six executions and remanded several other cases for consideration of claims related to intellectual disabilities and ineffective assistance of counsel, among other issues.
- Since 2013, a total of 27 individuals have been removed from death row in Texas for reasons other than execution.

Table of Contents

Introduction	3
Death Sentences	3
Executions	7
Stays of Execution and Dates Withdrawn	10
U.S. Supreme Court Developments.....	12
Reduced Sentences and Individuals No Longer on Death Row	14
Wrongful Executions	17
Wrongful Convictions.....	17
Other Case Developments	18
Legislative Developments.....	21
Public Opinion	21
Conclusion	21
Table 1: New Death Sentences in 2017	22
Table 2: Executions in 2017.....	22

Texas Death Penalty Developments in 2017: 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.

Texas Death Penalty Developments in 2017: The Year in Review

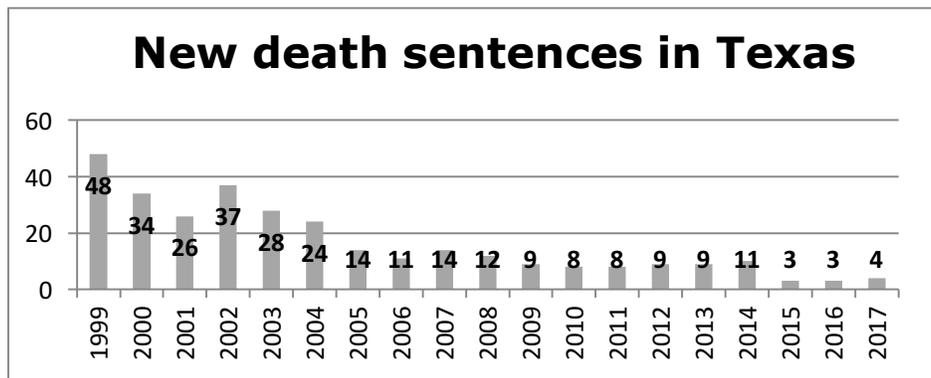
Introduction

The death penalty landscape in Texas has changed dramatically since 2000, mirroring national trends. Death sentences have declined from a peak of 48 death verdicts in 1999 to less than five new death sentences each year for the past three years. The number of executions carried out in 2017 remained at the state's lowest level 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 2017, new death sentences remained near record lows. Juries condemned four individuals to death, according to data compiled from media sources and the Texas Department of Criminal Justice (TDCJ). Death sentences peaked in 1999, when juries sent 48 people to death row.



For the second year in a row, no one was resentenced to death in Texas.

Death Sentences by County

A total of 20 Texas counties imposed death sentences in the last 5 years; of these, only 7 counties have done so in the last 2 years.¹ In 2017, Anderson, Bowie, Jefferson, and Walker Counties were responsible for the four new death sentences.²

- In a trial moved from Walker County, an Angelina County jury sentenced John Falk to death on March 1, 2017 for the 2007 death of Corrections Officer Susan Canfield during an escape attempt from the Wynne Unit in Huntsville. Falk chose to represent himself and pled guilty to capital murder; he did not present any evidence during the punishment phase of his trial. The judge found him competent to do so after ordering a psychological evaluation.

¹ View maps of new death sentences by county at <http://tcadp.org/get-informed/death-sentences-by-county/1974-2016-county-map/>.

² The capital trial of John Falk was moved from Walker to Angelina County. The capital trial of William Hudson was moved from Anderson County to Brazos County.

Falk’s co-defendant, Jerry Martin, was convicted and sentenced to death in 2009; Martin waived his right to appeal and was executed in 2013. Falk’s original trial took place in Brazos County in late 2012; in January 2013, the judge declared a mistrial due to a protracted legal dispute over language in the jury instructions.

- A Jefferson County jury sentenced Joseph Colone to death on May 8, 2017 for the 2010 killings of Briana and Mary Goodman in Beaumont. It was the second death sentence out of Jefferson County in the last five years.
- In a trial that was moved from Anderson County to Brazos County, a jury sentenced William Mitchell Hudson to death on November 16, 2017. He was convicted of three murders in a killing spree in Tennessee Colony in November 2015 that left six people dead. The jury deliberated less than an hour about the punishment. One other individual whose case originated in Anderson County is on death row.
- On November 16, 2017, a Bowie County jury sentenced Billy Joel Tracy to death for killing Correctional Officer Timothy Davison at the Telford Unit in 2015. Seventeen people have been sentenced to death out of Bowie County since 1974.

The following six counties – which constitute 2.4% of the 254 counties in Texas – account for more than half of all new death sentences imposed over the past five years. These are the only counties where juries imposed more than one death sentence in that timeframe.

Texas’ Highest Death Sentencing Counties Since 2013							
	2013	2014	2015	2016	2017	Total 2013-2017	Total Since 1974
Harris	1	4	0	0	0	5	294
Dallas	3	0	0	0	0	3	107
Tarrant	0	1	0	1	0	2	74
Jefferson	1	0	0	0	1	2	25
McLennan	1 ³	1 ⁴	0	0	0	2	18
Kaufman	0	1	0	1	0	2	3
Total	6	7	0	2	1	16	521
All TX Counties	9	11	3	3	4	30	1,099

For the third and fourth consecutive years respectively, jurors in Harris and Dallas Counties did not sentence anyone to death in a new case. The two cases in which prosecutors sought the death penalty in Dallas County both resulted in sentences of life without the possibility of parole. Read more in Jury Rejections and Non-Death Outcomes below.

³ The Texas Court of Criminal Appeals reversed this conviction and death sentence on December 7, 2016.

⁴ See Other Case Developments for more information on this case.

Death Off the Table

Prosecutors took the death penalty off the table in two high-profile cases this year:

- Shannon Miles pled guilty to capital murder for the fatal shooting of Harris County Sheriff's Deputy Darren Goforth in 2015 in exchange for a sentence of life without parole. According to the *Houston Chronicle*, Deputy Goforth's widow agreed to the plea deal, stating that she did not want to drag her children through years of court dates, trials, and appeals.⁵ Miles had a long, documented history of mental illness and spent months in a state hospital after being deemed incompetent to stand trial.
- In November, the Dallas County District Attorney's Office announced that it no longer planned to seek the death penalty for Antonio Cochran, who is charged with capital murder in the death of Zoe Hastings in 2015. Prosecutors acknowledged that evidence of Cochran's intellectual disability renders him ineligible for the death penalty.

Death Sentences by Race

Three of the men sentenced to death in Texas in 2017 are white; the fourth is African-American. Over the last five years, 70% of death sentences have been imposed on people of color; more than half of these death sentences were imposed on African-American defendants.

New Death Sentences by Race of Defendant						Total Sentences by Race
	2013	2014	2015	2016	2017	
African-American	7	5	0	3	1	16
Hispanic	1	2	1	0	0	4
Asian	0	0	1	0	0	1
Total People of Color	8	7	2	3	1	21
White	1	4	1	0	3	9
Total Sentences	9	11	3	3	4	30

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

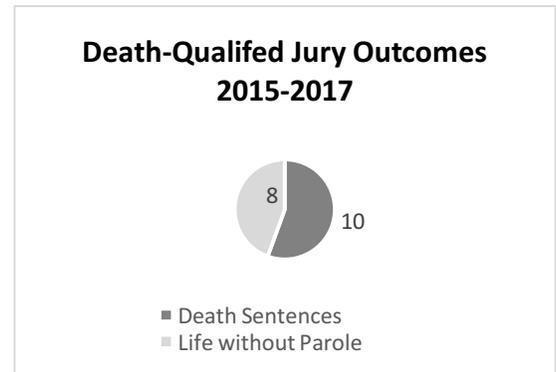
- Fifteen of the last eighteen defendants sentenced to death in Harris County are African-American and the other three are Hispanic. Jurors rejected the death penalty in two other trials involving Hispanic defendants (one in 2008 and one in 2015). The last death sentence sought and imposed on a white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

⁵ "Accused killer in deputy Goforth case pleads guilty, avoids death penalty," *Houston Chronicle*, September 13, 2017

- All nine men sentenced to death in Dallas or Tarrant County since 2012 are African-American.

While African-Americans comprise only 12.6% of the population of Texas, they constitute 44% of death row inmates, according to TDCJ. Hispanics comprise 26.7% of individuals on death row (39.1% of the population of Texas), and whites comprise 27.2% (42.6% of the Texas population).⁶

As of December 11, 2017, there are 234 death row inmates, which includes six women. This constitutes the smallest Texas death row population since 1987. More than one-third of these individuals were convicted in Harris County.⁷ Texas has the third-largest death row population in the nation, after California (744) and Florida (351). Texas' death row population peaked in 2000, when more than 450 individuals were awaiting execution.



Jury Rejections and Non-Death Outcomes

Since 2015, juries have rejected the death penalty in nearly as many cases as they have imposed it. There were two rejections by death-qualified juries in 2017; in a third trial involving the death penalty, prosecutors settled the case with a life sentence while the jury was deliberating the defendant's punishment. All three trials occurred in the Dallas-Fort Worth Metroplex and involved persons of color.

- In April, a death-qualified jury convicted Justin Pharez Smith of capital murder in the 2014 shooting deaths of three people in Dallas: Tyteanna Brown, Kimberly Montgomery, and Demarcus Walton. While the jury deliberated about punishment, Smith's attorneys worked out a deal with the special prosecutors handling the case to take the death penalty off the table. Jurors were sequestered for one night after they struggled to reach a unanimous decision about whether to send Smith to death row.
- Dallas County prosecutors sought the death penalty for Erbie Bowser, an African-American military veteran. Bowser showed signs of mental illness, likely suffered from post-traumatic stress disorder, and likely had Chronic Traumatic Encephalopathy (CTE). In August 2013, using guns and a hand grenade, he killed his girlfriend, his girlfriend's daughter, his estranged wife, and his estranged wife's daughter. When police found Bowser, he was catatonic, face down on the floor, and repeating his name, military rank, and serial number.

⁶ See http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html for details.

⁷ TDCJ counts 81 inmates from Harris County as of November 9, 2017.

Bowser was convicted of capital murder after the death-qualified jury rejected his insanity defense. On May 12, 2017, the jury declined to impose the death penalty after a lengthy and expert-filled penalty phase.

- On October 27, a Tarrant County jury rejected the death penalty for Miguel Angel Hernandez. He was sentenced to life without the possibility of parole. Hernandez was convicted of killing James Bowling during a burglary attempt in 2014; the jury rejected his insanity defense. It is the second jury rejection of the death penalty in Tarrant County since 2015.

Since 2010, death-qualified juries have rejected the death penalty in more than 20 capital murder trials in Texas.

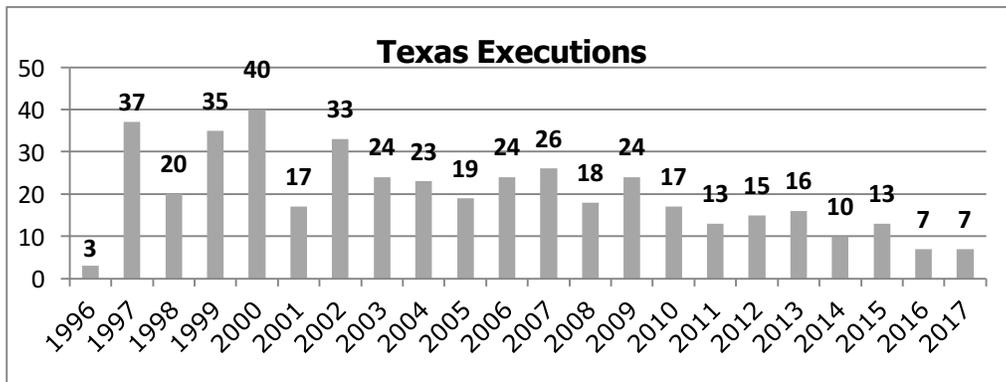
Executions

The State of Texas executed seven people in 2017, matching 2016 for the lowest number of executions in two decades. There was a four-month gap in executions, from March 14 to July 27, 2017. Texas accounted for 30% of U.S. executions. Eight states were responsible for executions in 2017.

U.S. Executions in 2017	
Texas	7
Arkansas	4
Alabama	3
Florida	3
Ohio	2
Virginia	2
Georgia	1
Missouri	1
Total	23

The State of Texas has executed a total of 545 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.

Of those executed in 2017, Christopher Wilkins served nine years on death row, while James Bigby served 26 years and Rolando Ruiz served 22 years. The average amount of time spent on death row for the seven men executed in 2017 was 16.5 years.



Several of the individuals executed had strong innocence claims, and many received appalling legal representation. Half of the men executed this year had prior execution dates.

- On January 11, 2017, Christopher Wilkins was executed for the 2005 murders of Mike Silva and Willie Freeman in Fort Worth. His October 2015 execution date was withdrawn at the request of Tarrant County prosecutors, who sought the delay after the Texas Forensic Science Commission raised concerns about DNA statistics and the interpretation of mixed DNA evidence. Wilkins was the first person executed in the United States in 2017.
- Despite considerable questions surrounding the validity of the evidence that convicted him, Terry Edwards was executed on January 26, 2017 for the 2002 murders of Tommy Walker and Mickell Goodwin during a robbery in Dallas County. Edwards, who was African-American, was tried by an all-white jury after prosecutors successfully removed all prospective African-Americans from the jury pool. At trial, prosecutors then suppressed evidence indicating that the State's key evidence was false and that Edwards was innocent. His earlier May 2016 execution date had been withdrawn to allow time for new attorney assignments, after Edwards told a Dallas court that his attorney had abandoned him. An October 2016 date also was withdrawn to allow his attorneys time to present evidence of prosecutorial misconduct.
- On March 7, 2017, Rolando Ruiz was put to death for the fatal shooting of Theresa Rodriguez in 1992 in San Antonio. He was hired to kill Rodriguez in a life insurance scheme orchestrated by the victim's husband, Michael Rodriguez, who received a life sentence for his role in the murder. Michael Rodriguez later was sentenced to death and executed in 2008 for his part in another crime.

Ruiz was granted a reprieve in August 2016 by the Texas Court of Criminal Appeals (CCA). His appeal questioned the effectiveness of his trial counsel and his initial habeas counsel. It also questioned the constitutionality of executing him more than 20 years after his conviction. The CCA lifted the stay on November 9, 2016, however, after declining to authorize a subsequent application for a writ of habeas corpus.

- On March 14, 2017, the State of Texas executed James Bigby for the 1987 murders of Michael R. Trekell and Jayson Kehler in Tarrant County. In 2005, the U.S. Court of Appeals for the Fifth Circuit overturned Bigby's death sentence after finding that the jury in his original trial did not properly consider mitigating evidence. Although his defense attorneys presented witnesses who testified that Bigby was a paranoid schizophrenic, he was resentenced to death in 2006. At least 30 individuals with documented histories of paranoid schizophrenia, bipolar disorder, and other persistent and severe mental illnesses have been executed by the State of Texas.
- The State of Texas executed TaiChin Preyor at 9:03 PM on July 27, 2017, after the U.S. Supreme Court rejected his final appeal. Preyor was convicted and sentenced to death for the murder of 20-year-old Jamie Tackett in 2004 in San Antonio. He received appalling legal representation during his appeals from a disbarred attorney in California and a probate and real estate lawyer who reportedly relied on Wikipedia to research Texas legal procedures.

- On October 12, 2017, the State of Texas executed Robert Pruett after the U.S. Supreme Court rejected his two remaining appeals. Pruett steadfastly maintained his innocence of the 1999 murder of Corrections Officer Daniel Nagle in the McConnell Unit in Beeville, Texas. No physical evidence connected him with the crime, and DNA analysis of the murder weapon revealed a DNA profile belonging neither to Pruett nor to Officer Nagle.

Pruett faced six execution dates in five years and received three stays of execution to allow time for DNA testing. At the time of his execution, the State still had 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 was not followed.

- On November 8, 2017, the State of Texas executed Ruben Cardenas after the U.S. Supreme Court rejected several remaining appeals. His execution sparked an outcry from international leaders. In violation of the Vienna Convention on Consular Relations, Cardenas was not notified of his right, as a Mexican national, to contact the Mexican consulate upon arrest. As a result, he was interrogated and confessed without any form of legal representation.

In addition to the international human rights violations, Cardenas' case had other flaws. According to the *Texas Tribune*, "Evidence used against Cárdenas at trial included an eyewitness who could not identify him in a lineup but could at his trial — a practice that was prohibited by the Texas Legislature this year in an effort to prevent wrongful convictions. His legal team also argued that DNA testing done nearly 20 years ago is now obsolete."⁸

See Table 2 on page 22 for a list of the individuals put to death in 2017.

Executions by Race

Of the seven men put to death by the State of Texas in 2017, two were Hispanic, two were African-American, and three were white. Since 1982, the State of Texas has executed 239 individuals who were white, 199 who were African-American, 103 who were Hispanic, and 4 who had another racial identity.

Collectively, four of the executions in 2017 involved cases with white victims, two involved Latino victims, and one involved the murders of a Latino male and an African-American male. In total, 381 executions in Texas involved cases with white victims, 90 involved Latino victims, and 73 involved African-American victims. Christopher Wilkins, executed in January, was only the fifth white defendant in Texas to be executed for a crime involving the murder of an African-American victim.

⁸ "Texas executes Mexican national despite international ire," *Texas Tribune*, November 8, 2017

Executions by County

Bexar and Tarrant Counties each accounted for two executions in 2017. Bee, Dallas, and Hidalgo Counties each were responsible for one execution. Dallas County accounts for a total of 56 executions since the resumption of executions in Texas on December 7, 1982; Bexar County accounts for 44, and Tarrant County accounts for 40.

For the first time since 1985 – and only the third time since the resumption of executions in Texas – Harris County did not account for any executions.⁹ Harris County alone accounts for a total of 127 executions, more than any state except Texas.

Five executions are scheduled already for the first quarter of 2018. Two involve cases from Dallas County.¹⁰

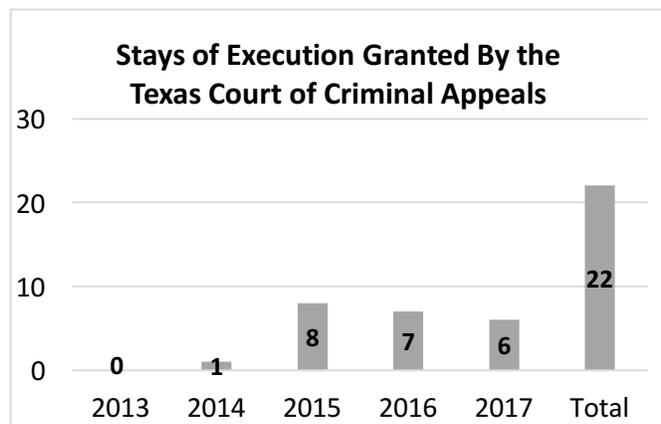
Stays of Execution and Dates Withdrawn

A total of nine individuals scheduled for execution in 2017 received reprieves, including stays granted by the courts (seven cases) and the withdrawal of execution dates (two cases).

Stays of Execution

Six 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. Two of these cases involve white defendants, two involve Hispanic defendants, two involve African-American defendants, and one involves a man of Asian descent.

- On January 31, a federal district court in Corpus Christi granted a stay of execution to John Ramirez. Ramirez was scheduled to be executed on February 2, 2017 for the 2004 murder of Pablo Castro. U.S. District Judge Nelva Gonzales Ramos granted the stay based on Ramirez’s claim of ineffective counsel by his previous court-appointed attorney. Following the ruling, the Texas Attorney General’s Office sought to overturn the stay at the U.S. Court of Appeals for the Fifth Circuit, but the court upheld it.
- On April 7, the CCA stayed the execution of Paul Storey and ordered the trial court to determine whether mitigating evidence related to the victim’s parents’ opposition to the death penalty could have been discovered previously. Storey was scheduled to be



⁹ The execution of Anthony Shore, who was convicted in Harris County, was delayed until January 2018. See Stays and Dates Withdrawn for details.

¹⁰ Nine executions had been scheduled for early 2017.

executed on April 12 for the 2008 murder of Jonas Cherry in Fort Worth. His attorneys filed a state habeas application with the CCA on March 31, 2017, asserting that the State denied Storey his right to due process because it introduced evidence it knew to be false, among other claims. Despite knowing that the Cherry Family opposed capital punishment, prosecutors contended in their closing arguments at trial that “it should go without saying that all of Jonas [Cherry’s] family and everyone who loved him believe the death penalty is appropriate.”

- On May 15, the CCA granted a stay of execution for Tilon Carter. Scheduled for execution on May 16, 2017, Carter has spent 11 years on death row for the 2004 robbery and murder of 89-year-old James Eldon Tomlin in Fort Worth. The CCA granted the stay based on Carter’s claim that prosecutors presented false and misleading evidence about the victim’s cause of death. Earlier this year, the CCA granted Carter a stay because the trial court missed the deadline to notify the Office of Capital and Forensic Writs about his execution date.
- The CCA stayed the execution of Kosoul Chanthakoummane on June 7 and ordered the trial court to review claims of discredited forensic science. Chanthakoummane was scheduled to be executed on July 19, 2017 for the 2006 murder of real estate agent Sarah Ann Walker in a model home in McKinney (Collin County). Earlier this year, State District Judge Ben Smith reset Chanthakoummane’s January execution date to allow time for the courts to review pending appeals.
- On August 22, the CCA stayed the execution of Steven Long to allow for further review of Long’s claims of intellectual disability in light of the U.S. Supreme Court ruling in *Moore v. Texas* (see page 13 for more information). Long was scheduled to be executed on August 30 for the assault and murder of 11-year-old Kaitlyn Briana Smith in May 2005 in Dallas County.
- The CCA stayed the October 26 execution of Clinton Young to consider his claim that false or misleading testimony was introduced at his trial. He was sentenced to death in Midland County for the 2001 murders of Doyle Douglas and Samuel Petrey. Although there were several individuals involved in the case, Young, who was only 18 at the time of the crime, was the only one sentenced to death. All of the other men testified against him.

The reliability of the co-defendants’ testimony is highly questionable, especially that of David Page. In 2002, he failed a polygraph test regarding his level of involvement in the shootings. Page’s testimony is also the only evidence identifying Clinton Young as the person who shot Samuel Petrey. New gunshot residue testing confirms that the gloves worn by Page were used to fire the gun at Petrey. Page pled guilty in 2003 to aggravated kidnapping in return for a 30-year sentence.

- On November 28, the CCA stayed the execution of Juan Castillo to review claims of false testimony. Castillo was scheduled to be executed on December 14, 2017, for the 2003 murder and robbery of Tommy Garcia, Jr. in San Antonio. In August, his execution was halted due to Hurricane Harvey. According to the *Texas Tribune*, jailhouse informant Gerardo Gutierrez testified that Castillo had confessed to the crime. But in 2013, Gutierrez signed an affidavit saying that he lied in his testimony “to try to help myself.”¹¹

Execution Dates Withdrawn

State trial courts modified or withdrew multiple execution dates in 2017. As noted above, several of these dates were rescheduled.

- Anthony Shore received a last-minute reprieve from execution after officials began to worry he would confess to another murder. Shore was convicted of multiple murders in Harris County in the 1980s and 1990s. Sentenced in November 2004, he is the last white defendant to receive a death sentence in Harris County.

According to the *Texas Tribune*, Montgomery County District Attorney Brett Ligon appealed to Governor Greg Abbott and Harris County District Attorney Kim Ogg for more time to investigate rumors that Shore would confess to a murder for which another death row inmate, Larry Swearingen, was convicted. Ogg filed a motion to withdraw Shore’s October 18 execution date after receiving Ligon’s request, which a judge granted. His execution has been rescheduled for January 18, 2018.

- Larry Swearingen’s execution was halted due to an error in issuing notice of the scheduled execution. The Montgomery County District Clerk’s office sent the execution order to the Texas Attorney General instead of the Office of Capital and Forensic Writs as required by law. Swearingen was scheduled to be executed on November 16, 2017 for the 1998 murder of Melissa Trotter. He has faced four previous execution dates, all of which have been stayed to consider claims related to forensic evidence. In early November, Swearingen’s attorneys and the State finally agreed to conducting DNA testing on several items, including fingernail scrapings and hair. His execution date has not been rescheduled.

U.S. Supreme Court Developments

The U.S. Supreme Court decided three death penalty cases from Texas during its October Term 2016; two of the cases originated in Harris County. The Justices heard arguments in a third case from Harris County in their October Term 2017; a ruling in that case is pending.

¹¹ “Texas Court of Criminal Appeals halts state’s last execution of 2017,” *Texas Tribune*, November 28, 2017

Buck v. Davis

On October 5, 2016, the U.S. Supreme Court heard oral arguments describing racial bias in the death penalty case of Duane Buck. Buck was condemned to death in 1997 in Harris County for the murders of his ex-girlfriend, Debra Gardner, and her friend, Kenneth Butler. His own trial attorneys inexplicably introduced testimony and a report from a psychologist, Dr. Walter Quijano, stating 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.

The Justices sided with Buck on February 22, 2017, with a 6-2 decision remanding the case back to the U.S. Court of Appeals for the Fifth Circuit. In the majority opinion written by Chief Justice John Roberts, Quijano's testimony is described as a "particularly noxious strain of racial prejudice." On April 13, 2017, the Fifth Circuit granted Buck relief and returned the case to Harris County. The Court also ordered that unless the state initiated proceedings of a new punishment trial in six months or "elects not to seek the death penalty and accedes to a life sentence," Buck should be released. Buck's case was resolved on October 3, 2017. See page 15 for details.

Moore v. Texas

On March 28, 2017, the U.S. Supreme Court ruled 5-3 that the state of Texas must use current medical standards for determining whether a person is intellectually disabled and therefore exempt from execution. The case – *Moore v. Texas* – involves Bobby James Moore, who 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.

In 2014, Harris County District Court Judge Susan Brown found that Moore is intellectually disabled based on current medical standards and therefore exempt from the death penalty. The Texas Court of Criminal Appeals (CCA) overruled her decision, however, claiming that she erred by using current standards instead of the Briseño factors, a set of non-scientific standards developed by the CCA to address claims of intellectual disability.

The U.S. Supreme Court heard oral argument in *Moore v. Texas* last fall on the question of whether it is unconstitutional for Texas "to prohibit the use of current medical standards on intellectual disability, and require the use of outdated medical standards, in determining whether an individual may be executed." In its March 2017 ruling, the Court found that the CCA "decision does not comport with the Eighth Amendment and this Court's precedents." The CCA is now reconsidering Moore's claim of intellectual disabilities in accordance with the Supreme Court's ruling. Moore's claim has received support from a broad coalition, including prominent Texans from across the political spectrum, faith leaders, intellectual disability organizations, medical organizations, and leaders of the legal profession.

Immediately after the *Moore* ruling, the U.S. Supreme Court returned the cases of two other individuals on death row in Texas – James Henderson and Raymond Martinez – to the U.S.

Court of Appeals for the Fifth Circuit for reconsideration based on their opinion requiring the use of current medical standards. Learn more about Martinez on page 16.

In October, the U.S. Supreme Court sent the case of Obie Weathers back to the Fifth Circuit to be reevaluated in light of *Moore*. Weathers was convicted of a 2000 murder in San Antonio. See *Reduced Sentences and Individuals No Longer on Death Row*, as well as *Other Case Developments*, for more details on cases related to the *Moore* decision.

Davila v. Davis

On June 19, 2017, on the final day of its October 2016 term, the U.S. Supreme Court issued its opinion in *Davila v. Davis*. The Justices ruled 5-4 against Davila, finding that attorney error in state post-conviction proceedings – for which there is no constitutional right to counsel – does not provide an excuse for the direct appeal lawyer’s failure to raise an issue on direct appeal, so that the issue may be raised in federal post-conviction proceedings.

Erick Davila was sentenced to death in 2009 for the murders of Annette Stevenson and her granddaughter, Queshawn, in Fort Worth. His trial attorney objected to improper jury instructions, but the attorney who represented Davila in his direct appeal did not raise this issue; his state habeas lawyer then failed to file a claim of ineffective assistance of counsel on those grounds. The U.S. Supreme Court heard arguments in *Davila v. Davis* on April 24, 2017. It was the first death penalty case in which Neil Gorsuch participated as a Justice.

Ayestas v. Davis

On October 30, 2017, the U.S. Supreme Court heard oral argument in the case of *Ayesta v. Davis*. Carlos Ayestas is a Honduran national who was sentenced to death in Harris County in 1997 for his role in the 1995 murder of 67-year-old Santiago Paneque during an apparent robbery. During his original trial, Ayestas’ attorneys failed to present mitigating evidence about his substance abuse and mental health issues. The fact that a jury never heard this mitigating evidence – and federal courts have denied attorneys the funds to investigate it – is at the heart of the claim before the Court. The Justices are considering whether lower courts erred in refusing to appropriate funds for attorneys to investigate Ayestas’ claims of ineffective assistance of counsel. They will issue a ruling in the case next year.

Reduced Sentences and Individuals No Longer on Death Row

Four individuals received reduced sentences and were removed from death row in 2017; collectively, they spent more than 100 years on death row. Two other individuals died in custody.

Reduced Sentences

Another case was resolved in the wake of a U.S. Supreme Court ruling in the case of Johnny Paul Penry in 2001, which mandated that dozens of individuals on death row receive new

sentencing hearings. In that decision, the Court determined that jurors must have an opportunity to consider mitigating evidence in the punishment phase of death penalty trials.

- On April 18, 2017, Randolph Mansoor Greer pled guilty and received four consecutive life sentences. He had been convicted and sentenced to death for the 1991 murder of Walter Chmiel during a robbery of a gun shop in Bellaire (Harris County). Greer was 18 at the time of the crime. The courts ordered a new punishment hearing in 2011.

According to the *Houston Chronicle*, the Penry decision has brought almost 20 cases back to Harris County for reconsideration.¹² Many of these cases have resulted in sentences other than the death penalty.

Two men were removed based on evidence of their intellectual disabilities: Pedro Sosa and Robert Campbell. Respectively, Sosa and Campbell spent 32 and 25 years on death row.

- On May 3, 2017, the Texas Court of Criminal Appeals reduced the sentence of Pedro Sosa to life in prison. Sosa was sentenced to death for the 1983 abduction and shooting death of 55-year-old Ollie Childress Jr., a Wilson County deputy. A trial court recommended that the sentence be reduced based on evidence of intellectual disabilities. Sosa faced three execution dates during his 32 years on death row.
- In the case of Robert Campbell, the Texas Attorney General's Office determined he should receive a new sentencing hearing in light of the U.S. Supreme Court decision in *Moore v. Texas* regarding the way Texas assesses intellectual disability. In June, Harris County District Attorney Kim Ogg announced that she would not seek another death sentence, reducing Campbell's punishment to life in prison.

Campbell was scheduled to be executed on May 13, 2014 for the rape and murder of Alexandra Rendon in 1991. The U.S. Court of Appeals for the Fifth Circuit halted the execution that day to consider newly discovered evidence of his intellectual disabilities, including the results of IQ tests that had been concealed by prosecutors and the Texas Department of Criminal Justice. Campbell was 19 years old when he arrived on death row.

As detailed in the section on U.S. Supreme Court Developments on pages 12-14, the case of Duane Buck returned to Harris County after the federal courts granted relief.

- In a court hearing on October 3, 2017, Duane Buck pled guilty to two additional counts of attempted murder in a deal that exchanged the death penalty for a life sentence plus two 60-year terms. He spent 20 years on death row.

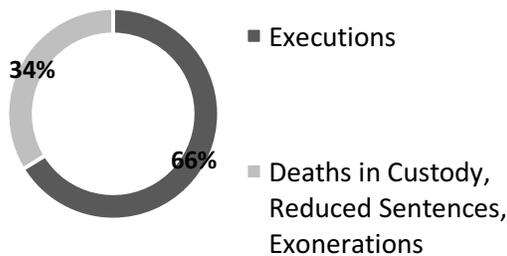
Harris County District Attorney Kim Ogg explained in a statement that "After reviewing the evidence and the law, I have concluded that, 22 years after his conviction, a Harris County

¹² "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014

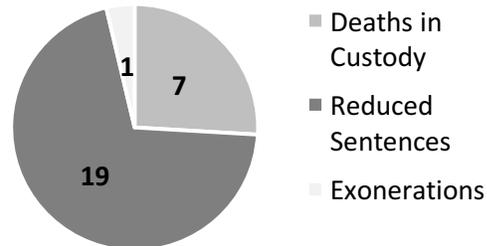
jury would likely not return another death penalty conviction in a case that has forever been tainted by the indelible specter of race.”¹³

Since 2013, a total of 27 individuals have been removed from death row in Texas due to reduced sentences (19), deaths in custody (7), or exonerations (1). More than half of these cases came from Harris County. During this same timeframe, the State executed 53 people.

**No Longer on Death Row
2013-2017**



**No Longer on Death Row
2013-2017**



Deaths in Custody

Two individuals on death row died of natural causes this year:

- Joseph Lave died of colon cancer on May 17, 2017 at the age of 52. Just a few months earlier, the U.S. Supreme Court had refused to consider his case. Lave was convicted under the law of parties for the robbery and murder of Justin Marquart and Frederick Banzhaf at a suburban Dallas sporting goods store in 1992. He received life in prison for Banzhaf's killing and a death sentence for Marquart's slaying.

Lave was scheduled to be executed on September 12, 2007, but then-Dallas County District Attorney Craig Watkins asked that the execution order be withdrawn. The request came after Watkins' office discovered that long-requested information regarding a second polygraph test by a co-defendant had not been turned over to the defense; the previous district attorney's administration asserted that the evidence did not exist.

- Raymond Deleon Martinez was found unresponsive in his cell on death row on August 9, 2017. He was 71 years old and had been on death row since 1984 for the 1983 murder of 40-year-old saloon owner Herman Chavis during a robbery in Houston. His death sentence was overturned in 1988 because of problems with the jury selection process. Martinez was resentenced to death and scheduled to be executed in 2006 but received a last-minute stay.

In 2007, the Texas Court of Criminal Appeals invalidated his death sentence, finding that the trial court judge had failed to let jurors properly consider mitigating evidence, including his

¹³ See <http://app.dao.hctx.net/buck-goes-death-row-life-plus-two-60-year-terms>.

history of mental illness. According to the *Houston Chronicle*, Martinez was diagnosed as a paranoid schizophrenic with an IQ of 65. A Harris County jury returned a third death sentence in 2009.¹⁴

Earlier this year, the U.S. Supreme Court sent Martinez's case back to the U.S. Court of Appeals for the Fifth Circuit, asking the lower court to reconsider his case due to its decision in *Moore v. Texas*. Martinez was one of the state's longest-serving death row prisoners.

Wrongful Executions

There were developments in two cases involving individuals who may have been wrongfully executed by the State of Texas:

- The surviving sons of David Spence, who was convicted and sentenced to death for the 1982 Lake Waco Murders, filed a lawsuit against the State of Texas in April. They claim their father and the three other suspects in the case were innocent. David Spence was executed in 1987. The lawsuit, which was filed in Travis County District Court, alleges that the State of Texas “withheld evidence, destroyed evidence, coerced untruthful confessions, utilized junk science, [and] bribed witnesses... ”¹⁵ It demands compensation for wrongful imprisonment and attorney fees, as well as full pardons for the defendants.
- After a two-week trial in Navarro County, a jury found former prosecutor John Jackson not guilty of misconduct in the 1992 capital murder trial of Cameron Todd Willingham. Willingham was executed in 2004 for the 1991 arson deaths of his three young daughters in Corsicana, despite compelling evidence of his innocence.

The State Bar of Texas brought charges of misconduct against Jackson in 2016, based on a grievance filed by the Innocence Project accusing him of obstruction of justice, making false statements, and concealing evidence favorable to Willingham's defense. In 2014, journalists exposed the fact that Jackson worked for years to assist Johnny Webb, the jailhouse informant whose testimony was instrumental in Willingham's conviction.

Wrongful Convictions

In June, the Texas Supreme Court rejected Robert Springsteen's quest to be declared actually innocent and therefore eligible for compensation. He spent four years on death row for the murders of four teenage girls in Austin in 1991. In 2009, Travis County prosecutors dismissed all charges against Springsteen and co-defendant Michael Scott due to a lack of evidence. They still consider the investigation open, however, and oppose Springsteen's request to be found innocent.

Springsteen, who was 17 at the time of the crime, was removed from death row in 2005 and sentenced to life in prison in compliance with the U.S. Supreme Court decision *Roper v.*

¹⁴ “Harris County death row prisoner convicted in saloon robbery found dead in cell,” *Houston Chronicle*, August 9, 2017

¹⁵ “Sons of man executed for Lake Waco Murders sue Texas,” KCEN, April 21, 2017

Simmons, which prohibited the death penalty for juvenile offenders. The Texas Court of Criminal Appeals overturned the convictions of both Springsteen and Scott in 2007 because they had not been adequately allowed to cross-examine each other. Both claim that their confessions had been coerced. New testing of DNA evidence in 2008 on swabs taken from the youngest victim revealed an unknown male profile that did not match Scott, Springsteen, or other previous suspects.

According to the *Austin American-Statesman*, the Texas Supreme Court rejected Springsteen's appeal without comment, letting stand a lower court ruling that Springsteen does not meet the definition of "actual innocence" under state law because he has not been pardoned and because prosecutors do not agree that he is innocent of the crime.¹⁶

Since 1973, 160 individuals – including 13 people in Texas – have been released from death rows nationwide due to evidence of their wrongful conviction.

Other Case Developments

There were significant developments in numerous death penalty cases in 2017 on issues related to intellectual disability, ineffective assistance of counsel, and competency to be executed, among other issues.

Cases Related to Claims of Intellectual Disability

The U.S. Supreme Court's ruling in *Moore v. Texas* clarifies the standard for intellectual disability. Thus far, courts have taken action on these cases:

- In May, the U.S. Court of Appeals for the Fifth Circuit authorized Eric Dewayne Cathey to file a successive habeas petition challenging his eligibility for the death penalty on grounds of intellectual disability. He was sentenced to death in Harris County in 1997.
- The Texas Court of Criminal Appeals (CCA) will reconsider Carnell Us Petetan, Jr.'s intellectual disabilities claim after rejecting his appeal in March 2017. He was convicted of killing his estranged wife Kimberly Farr Petetan in Waco in 2012.
- Prior to the *Moore* decision, in January, the Fifth Circuit granted Edward Lee Busby the right to pursue claims of intellectual disabilities and ineffective assistance of counsel. Busby was sentenced to death for killing Laura Lee Crane in 2004 in Fort Worth.

Cases related to ineffective assistance of counsel

The CCA ordered new punishment hearings in two death penalty cases on claims related to ineffective assistance of counsel.

¹⁶ "Supreme Court rejects bid for innocence in yogurt shop murders," *Austin American-Statesman*, June 9, 2017

- In October, the CCA ordered a new sentencing hearing for Hector Medina, a native of El Salvador. Medina was sentenced to death in 2008 for killing his two young children in Dallas. During the punishment phase of his trial, his lawyer refused to present evidence to persuade jurors to opt for the sentence of life without parole. According to the *Texas Tribune*, attorney Donna Winfield refused to present a case after the defense's portion of the trial was delayed because one juror was injured and another left to witness the birth of his grandchild, according to court records.¹⁷
- In November, the CCA ordered a new sentencing hearing for Doug Armstrong after finding his trial attorneys had failed to thoroughly investigate his "squalid and dangerous home life." Armstrong was convicted of killing Rafael Castelan in Hidalgo County in 2006. The court ruled that information about Armstrong's childhood and expert testimony about his mental and physical health issues might have persuaded at least one juror to choose a sentence other than death.

Cases Related to Competency Issues

Two individuals were found competent to be executed after receiving stays on those grounds from the CCA.

- On September 20, 2017, the CCA found John Battaglia competent for execution. The court halted Battaglia's scheduled December 2016 execution after his attorney appealed a lower court judge's ruling that Battaglia was mentally competent. Battaglia was convicted of capital murder for the May 2001 deaths of his 6- and 9-year-old daughters in Dallas. He now has a February 1, 2018 execution date.
- Randall Mays was found competent for execution by senior state visiting District Judge Joe D. Clayton on October 2, 2017 after an evidentiary hearing. Mays was sentenced to death in 2008 for killing Henderson County Deputy Tony Ogburn. In 2015, the CCA stayed his scheduled execution after finding he made "a substantial showing that he is incompetent to be executed;" the court ordered further competency hearings, including the appointment of mental-health experts.

In two other cases, the U.S. Court of Appeals for the Fifth Circuit granted claims related to competency issues:

- On July 11, 2017, the Fifth Circuit returned Scott Panetti's case to the federal district court with orders to appoint counsel, authorize funds for investigative and expert assistance, and allow adequate time to prepare a habeas corpus petition raising the claim that Panetti is currently incompetent to be executed.

¹⁷ "Death row inmate gets new sentencing hearing because lawyer refused to present his case," *Texas Tribune*, October 4, 2017

Less than eight hours before his scheduled execution on December 3, 2014, the Fifth Circuit granted Panetti a stay to consider the “complex legal questions” surrounding his case. Panetti was convicted and sentenced to death for the 1992 murder of his in-laws, Joe and Amanda Alvarado. Kerr County District Judge Stephen Ables allowed Panetti to represent himself despite his long, documented history of paranoid schizophrenia and frequent hospitalizations pre-dating the crime.

Texas sought to execute Panetti in 2004, but a federal judge stayed the execution and the U.S. Supreme Court ultimately found the Fifth Circuit’s standard for determining competency to be executed unconstitutional in *Panetti v. Quarterman*, 551 U.S. 930 (2007). Notwithstanding that decision, state officials continued to contest Panetti’s competence to be executed. In 2013, the Fifth Circuit again found him competent to be executed – despite the District Court’s findings that he has a severe mental illness and suffers from paranoid delusions. Panetti, whose competency has not been evaluated since 2007, has a fixed delusion that Satan, working through the state, is trying to kill him for preaching the Gospel.

- In June, the Fifth Circuit agreed to examine whether Victor Saldano was competent to stand trial and whether his lawyers were deficient for not requesting a competency hearing before he was resentenced to death years after the initial trial. Saldano, a native of Argentina, was sentenced to death for killing Paul King in 1995 in Plano (Collin County). His death sentence was overturned after a judge found that psychologist Walter Quijano had provided racially biased testimony that Saldano’s Hispanic background made him likely to be a future danger (see *Buck v. Davis* on page 13 for more on Dr. Quijano). A new punishment hearing in 2004 resulted in another sentence of death.

Cases Related to Other Issues

- In October, the CCA rejected State District Judge Mark Kent Ellis’ recommendation that Arthur Brown receive a new trial because of false testimony by a Houston Police Department ballistics expert during his 1993 death penalty trial. Brown’s October 2013 execution date was withdrawn to allow for additional testing on the firearms used in the 1992 drug-related killings of Jose Tovar, Jessica Quinones, Audrey Brown, and Frank Farias in Houston. After an evidentiary hearing in 2016, Judge Ellis found that ballistics expert Charles Anderson testified falsely as to whether bullets found at the murder scene matched two pistols connected to Brown. The CCA found, however, that Anderson’s possibly inaccurate testimony was not material to the jury’s decision.
- The Texas Thirteenth Court of Appeals ruled on January 19, 2017 that all charges against Jerry Hartfield should be dismissed with prejudice after he spent 32 years in prison without a valid conviction in place. The court found that his constitutional right to a speedy trial had been violated. Hartfield was convicted of the 1976 slaying of 55-year-old Eunice Lowe in Bay City. His death sentence and conviction were overturned in 1980 because of improper jury selection. He was granted a new trial, which he did not receive. Then-Governor Mark

White attempted to commute Hartfield's sentence in 1983. The CCA ruled, however, that Governor White could not commute the sentence because by then there was no legal conviction.

Hartfield was finally retried in 2015. Prosecutors did not seek another death sentence due to evidence of his intellectual impairments. He was found guilty and sentenced to life in prison. Hartfield appealed that conviction on the basis that his right to a speedy trial had been violated. The CCA agreed, and in June, Hartfield was released from prison. The State's petition for certiorari in the Supreme Court was rejected in November.

Legislative Developments

During the 85th Texas Legislature, lawmakers considered numerous bills related to capital punishment. Several bills aimed at improving the fairness and accuracy of the criminal justice system were introduced and passed out of committee.

In April, the Texas House Criminal Jurisprudence Committee heard testimony on House Bill 1537, a death penalty abolition bill filed by State Representative Jessica Farrar (House District 148-Houston) and co-authored by State Representatives Alma Allen and Donna Howard. Rep. Farrar has sponsored death penalty repeal legislation in every session since 2007. The bill strikes the death penalty as a sentencing option from all relevant sections of the Texas Penal Code and Code of Criminal Procedure and replaces it with life in prison without the possibility of parole. HB 1537 was left pending in the House Criminal Jurisprudence Committee.

State Senator Eddie Lucio, Jr. (Senate District 27–Brownsville) filed an abolition bill in the Texas Senate – Senate Bill 597. The bill was referred to the Senate Criminal Justice Committee; it did not receive a hearing.

Public Opinion

According to the most recent Gallup poll data from October 5-11, 2017, only 55% of U.S. adults support the death penalty. This represents the lowest level of support since 1972, which was influenced by the U.S. Supreme Court ruling in *Furman v. Georgia*. The poll also found that only 51% of respondents believe the death penalty is applied fairly.

Conclusion

Use of the death penalty continues to decline in Texas, as measured by decreases in 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. Flaws in death penalty cases are frequently identified on the eve of execution, highlighting the fact that the system is still fraught with error and injustice.

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 2017

TDCJ Number	Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
999608	Hudson	William	07/03/1982	M	White	11/16/2017	Anderson	11/14/2015
999607	Tracy	Billy	11/30/1977	M	White	11/15/2017	Bowie	07/15/2015
999606	Colone	Joseph	08/13/1978	M	Black	05/09/2017	Jefferson	07/31/2010
999605	Falk	John	11/19/1966	M	White	03/01/2017	Walker	09/24/2007

Source: Texas Department of Criminal Justice

Table 2: Executions in 2017

Execution	Last Name	First Name	TDCJ Number	Age	Date	Race	County
545	Cardenas	Ruben	999275	47	11/09/2017	Hispanic	Hidalgo
544	Pruett	Robert	999411	38	10/12/2017	White	Bee
543	Preyor	Taichin	999494	46	7/27/2017	Black	Bexar
542	Bigby	James	997	61	3/14/2017	White	Tarrant
541	Ruiz	Rolando	999145	44	3/07/2017	Hispanic	Bexar
540	Edwards	Terry	999463	43	1/26/2017	Black	Dallas
539	Wilkins	Christopher	999533	48	01/11/2017	White	Tarrant

Source: Texas Department of Criminal Justice