

Texas Death Penalty Developments in 2010

The Year in Review

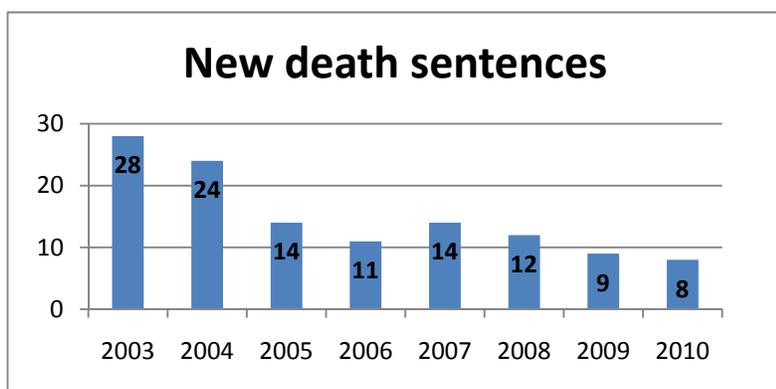
**Texas Coalition to Abolish the Death Penalty
December 2010**

Texas Death Penalty Developments in 2010: The Year in Review

The Texas Coalition to Abolish the Death Penalty (TCADP) publishes this annual report to inform citizens and elected officials about issues associated with the death penalty in Texas during the past year. It presents information on new death sentences, executions, and stays; exonerations; legislative developments; and other issues affecting the criminal justice system in the nation's most active death penalty state. The report is available online at www.tcadp.org/TexasDeathPenaltyDevelopments2010.pdf.

Death Sentences

Death sentences in Texas have dropped more than 70% since 2003, reaching a historic low in 2010. According to data compiled from news sources and the Texas Department of Criminal Justice, juries condemned eight new individuals to death in Texas in 2010.¹ This is the lowest number of new death sentences since the U.S. Supreme Court upheld Texas' revised death penalty statute in 1976.



Six counties accounted for the new death row inmates: Brazos; Dallas; Harris; Nueces; Rusk²; and Travis. This represents 2% of all Texas counties. While Harris County did not condemn any new defendants to death in 2008 or 2009, it imposed two new sentences in 2010. Still, this is a steep departure from the 1990s, when Harris County sent as many as 15 people to death row in a year. Dallas County also accounted for two of the new death sentences.

An analysis of data from 2007 to 2010 reveals that only 21 Texas counties have imposed death sentences over the last four years. Out of a total 43 death sentences imposed between 2007 and 2010, Dallas County leads with seven; it is followed closely by Harris County, with six new sentences in that time period. The other 19 counties imposed 1-3 sentences each. Together, these 21 counties represent just 8% of the 254 counties in Texas. See Appendix A for a map of new death sentences by county from 2007 to 2010. See Appendix B for a map of death sentences by county from 1976 to 2010. (Go to www.tcadp.org to view virtual maps.)

This data is consistent with national sentencing trends, as presented earlier this year by Robert Smith, the author of the blog "Second Class Justice." Citing figures from the American Judicature Society, Smith revealed that only 10% of U.S. counties accounted for all death sentences imposed between 2004 and 2009; only 5% of U.S. counties accounted for all death sentences between 2007 and 2009.³ Nationally, new death sentences have dropped 63% over the last decade, according to the Death Penalty Information Center.⁴

¹ Fabian Hernandez appears on the Texas Department of Criminal Justice list of Offenders on Death Row as "received" in 2010, but he was sentenced to death at the end of 2009.

² The trial took place in Montgomery County.

³ See <http://www.secondclassjustice.com/?p=116> for details. Please note that these maps include both new death sentences and resentences.

⁴ See <http://www.deathpenaltyinfo.org/documents/2009YearEndReport.pdf> for details on national sentencing trends.

Four of the new death row inmates in 2010 are African American, three are white, and one is Hispanic/Latino. Over the last four years, nearly three-fourths of all death sentences in Texas have been imposed on people of color – 40% African American, 30% Hispanic/Latino, and 2% other. According to the most recent data from the U.S. Census⁵, African Americans comprise only 12% of the population of Texas. They comprise 38.8% of death row inmates.

Jury Rejections

Juries rejected the death penalty in three capital murder cases in 2010, resulting in sentences of life in prison without the possibility of parole.

- On March 3, 2010 **Joe Estrada, Jr.** was spared a death sentence and instead sentenced to life in prison without parole by a jury in Victoria County. Estrada was 18 years old when he killed San Antonio restaurateur Viola Barrios in 2008. The defense argued to the jury that Estrada was born with partial fetal alcohol syndrome and, as a result, was impulsive, immature, and unable to adapt to social customs. The jury decided on the sentence in four hours, determining that Estrada did not pose a “future danger” to society. The case had been moved from San Antonio because of pretrial publicity.
- On June 25, 2010, a jury in Brazoria County rejected the death penalty for **Nicholas-Michael Edwin Jean** and sentenced him to life in prison without the possibility of parole for the capital murder of Susana Puente De Jesus, who had been carjacked in Pearland on February 2, 2009. According to the *Houston Chronicle*, “Jurors said that given his age [of 22], the sentence was seen as a harsher penalty for Jean than a death sentence, which could have been carried out in the vicinity of a dozen years.”⁶
- On October 7, 2010, a Bexar County jury rejected the death penalty for **Keith Evans**, who was convicted of the capital murder of Mohammed “Moe” Omar during a failed robbery attempt of a convenience store in San Antonio. Evans admitted his guilt in the attempted robbery and murder, but testified that he had not intended to shoot and kill Mr. Omar. While jurors determined that he posed a future threat to society, they agreed that mitigating circumstances warranted a sentence other than death.⁷ In 2009, a Bexar County jury rejected the death penalty for **Russell Knowles** in a case that also involved the botched robbery of a convenience store.

Resentencing

On July 29, 2010, a Hidalgo County jury resentenced **John Allen Rubio** to death for murdering his common-law wife’s three children in 2003. The case had been moved from Cameron County due to pretrial publicity. The Texas Court of Criminal Appeals overturned Rubio’s original conviction and death sentence in 2007. The court found that statements from Angela Camacho, the mother of the children and Rubio’s common-law wife, had been improperly admitted as evidence in the original trial. Camacho pled guilty to her role in the murders and is serving a life sentence.

During his retrial, Rubio’s lawyers presented experts who testified that their client suffered from paranoid schizophrenia and believed that the children were possessed by demons. The jury rejected his plea of not guilty by reason of insanity, however, and resentenced him to death. Jurors did not have the option of sentencing Rubio to life in prison without the possibility of parole, since that form of punishment did not become law in Texas until September 2005.

There currently are 317 people (307 men and 10 women) on death row in Texas. Texas holds the third-largest death row population in the nation, after California (713) and Florida (393).

⁵ See <http://quickfacts.census.gov/qfd/states/48000.html> for more information.

⁶ “Jury spares killer’s life in carjacking-slaying,” *Houston Chronicle*, June 26, 2010

⁷ “Store Owner’s Killer Gets Life Term,” *San Antonio Express-News*, October 8, 2010

Executions

The State of Texas carried out 17 executions in 2010, the lowest number for the state since 2001.⁸ It accounted for approximately 37% of U.S. executions this year, a smaller percentage than in recent years when Texas accounted for 45-62% of all executions nationwide (2005-2009). Eleven other states carried out executions this year.

Texas now has executed a total of 464 people since 1982; 225 executions have occurred during the administration of Texas Governor Rick Perry (2001 to the present).



Of the 17 people executed in Texas in 2010, seven were white, five were African American, and five were Hispanic/Latino. All were male. Last year, 88% of those executed were people of color (58% African American). In 2010, people of color comprised 59% of those executed.

Another notable difference between executions in 2009 and those in 2010 relates to the county of conviction. In 2009, just three counties – Bexar, Harris, and Tarrant – accounted for 63% of the executions. In 2010, 12 different counties convicted those who were executed. Three inmates had been convicted in Harris County and two each were convicted in Dallas, Hunt, and Collin Counties. Other

counties of conviction were: Bee; Bexar; El Paso; Fort Bend; Lamar; Montgomery; Travis; and Walker.

Among those executed in 2010 was **David Lee Powell**, who was sentenced to death in 1978 for the murder of Austin Police Officer Ralph Ablanado. Powell spent 32 years on death row, during which time he was considered a model prisoner who assisted fellow inmates by diffusing conflicts, teaching others to read, and advocating for those with disabilities. His attorneys argued that Powell did not present a “future danger” to society, the argument used by prosecutors to convince jurors to sentence him to death. At a resentencing hearing in 1999, several prison guards from death row who knew Powell for years

testified on his behalf. He had no history of violence before or after the crime for which he was convicted and sentenced to death. Life without the possibility of parole was not a sentencing option for Powell, as it did not go into effect in Texas until September 2005.

Four executions already are scheduled in Texas in 2011.

U.S. Executions in 2010 (As of December 13, 2010)	
Texas	17
Ohio	8
Alabama	5
Virginia	3
Mississippi	3
Georgia	2
Oklahoma	2*
Florida	1
Louisiana	1
Arizona	1
Utah	1
Washington	1
Total	45
<i>*There is an execution scheduled in Oklahoma on December 16.</i>	

Stays of Execution/Date Withdrawn

As the number of executions declined in 2010, the number of stays granted by the courts also dropped for the first time in recent years. Three inmates scheduled for execution in 2010 received last-minute stays; the execution date of another inmate was withdrawn. This is a departure from the past three years, when six or seven stays were granted each year.

- On March 24, 2010, the U.S. Supreme Court granted a last-minute stay of execution to **Henry “Hank” Skinner** to determine whether to hear his appeal. Skinner was scheduled to be executed that evening for the 1993 murders of his girlfriend Twila Busby and her two developmentally disabled

⁸ There were 17 executions in 2001.

adult sons (his execution already had been rescheduled from February 24, 2010). Key pieces of evidence collected at the crime scene have never been subjected to DNA testing, and officials have refused to release it for analysis.

In his original trial, Skinner was represented by a former district attorney who had previously prosecuted him for theft and assault. That attorney chose not to seek DNA testing, despite the fact that Skinner steadfastly protested his innocence of the crime.

Skinner had already eaten his so-called last meal when he received word of the stay. On May 24, 2010, the Court announced that it would hear arguments in the case. See U.S. Supreme Court Developments below for more details.

- On June 30, 2010, **Jonathan Green** received a last-minute stay of execution from the Texas Court of Criminal Appeals in order to consider his attorney's claims that severe mental illness has rendered him incompetent for execution. The court asked for more information and clarification regarding Green's competency motion. According to his attorneys, he suffers from delusions and hallucinations. Green, who is African American, was sentenced to death by an all-white jury in Montgomery County for the 2000 murder of Christina LeAnn Neal.
- **Gayland Bradford**, scheduled for execution on October 14, 2010, received a stay from the U.S. Supreme Court. The temporary stay, granted by Justice Antonin Scalia on October 8, sought to give Bradford's attorneys time to file a full appeal. His attorneys contend that he is mentally deficient and that he received inadequate legal representation in some of his earlier appeals. Bradford was convicted of the 1988 murder of Brian Edward Williams in Dallas.
- State District Judge Wayne Salvant withdrew the December 1 execution date he set for **Steven Staley** in order to conduct another hearing to determine whether he is mentally competent to be executed. Staley was diagnosed as a paranoid schizophrenic after he arrived on death row in 1991 for the murder of restaurant manager Robert Read. For the last few years, he has been forced to take anti-psychotic drugs against his will. Staley believes that the drugs are poisoning him. State officials argue that this forced medication is necessary in order to render him competent to be executed.

In 1986, the U.S. Supreme Court ruled in the case of *Ford v. Wainwright* that it is unconstitutional to execute someone who does not understand the reason for, or the reality of, his or her punishment. The *Ford* decision left the determination of insanity and competency for execution up to each state, however, and it has not prevented the execution of scores of offenders with severe and persistent mental illnesses, such as schizophrenia or bipolar disorder.

In Texas, the state legislature did not establish a statute governing the process to determine competency to be executed until 1999, and the U.S. 5th Circuit Court of Appeals, which considers cases from Texas, Louisiana, and Mississippi, has never found a death row inmate incompetent for execution. The statute does not address the issue of forced medication, however, and state and federal courts have allowed it.

Reduced Sentences/Inmates No Longer on Death Row

At least six inmates received reduced sentences in 2010, including several whose death sentences were overturned because jurors did not hear mitigating evidence during their original trials.

- **Gabriel Gonzales** received a life sentence in February in Bexar County. The Texas Court of Criminal Appeals ordered a new sentencing hearing in 2006 after finding that jurors in his 1997 trial did not hear potentially mitigating evidence about his abusive childhood. Special prosecutor Raymond

Fuchs accepted the plea agreement due to the age of the case, difficulty in tracking down witnesses again, and other potential appellate issues.⁹ Gonzales was convicted of the murder of Louella Hilton.

- In May, **Eric Lynn Moore** was removed from death row after federal courts deemed him mentally retarded. The U.S. Supreme Court denied the State's attempts to reinstate the death sentence. Moore now is serving a life sentence for the 1990 murder of Elizabeth Ayers.

The U.S. Supreme Court decision *Atkins v. Virginia* (2002) prohibits the application of the death penalty to persons with mental retardation. At least 13 inmates have been removed from Texas' death row since 2002 in compliance with *Atkins*.

- In June, **Ted Calvin Cole** (who changed his name in prison to Jalil Abdul-Kabir) received a life sentence after the district attorney's office in Tom Green County determined that too much time had elapsed since his original conviction in 1988 to retry him. According to a release issued by the 51st and 119th District Attorney's Office, the passage of 22 years since the initial trial made it unlikely a new death penalty sentence would be carried out or upheld at the appellate courts.¹⁰ As such, the office decided to drop its pursuit of another death sentence for Cole.

In 2007, the U.S. Supreme Court overturned Cole's death sentence for the murder of Raymond Richardson of San Angelo (*Abdul-Kabir v. Quarterman*). The Justices determined that the Texas sentencing statute in effect at the time of his original trial did not allow juries to fully consider mitigating evidence presented by the defense. A number of Texas inmates have received new sentencing hearings – and in some cases, reduced sentences – in light of the Court's 2007 decision in that case, which was simultaneously heard and decided along with the cases of LaRoyce Smith (*Smith v. Texas*) and Brent Ray Brewer (*Brewer v. Quarterman*).

- A new sentencing hearing for **John Wade Adams** in Dallas County resulted in a mistrial after jurors spent 27 hours deliberating without agreement as to whether he should be sent back to death row. On August 2, 2010, Judge Gracie Lewis sentenced Adams to life in prison for the 1997 murder of Donna Vick. In 2009, a federal court overturned his death sentence after finding that the jury did not hear mitigating evidence about his difficult childhood.
- **Jimmie Lucero** received a life sentence in October. A month before, the Texas Court of Criminal Appeals overturned his 2005 death sentence, finding that Lucero's trial attorneys failed to properly investigate his background or present mitigating evidence to the jury. He was convicted of murdering Pedro Robledo, his wife Maria Manuela, and their daughter Maria Fabiana in 2003 in Amarillo.
- In November, the Texas Court of Criminal Appeals overturned the conviction of **Roderick Newton** after agreeing with a Dallas judge that prosecutors withheld key evidence from his defense attorneys. Newton received a stay on July 22, 2009, the day before his scheduled execution, with the consent of the Dallas County District Attorney's Office. The appeals court ordered a district court to determine if Newton deserved a new trial based on evidence that had not been made available to the defense at the time of trial.

Newton was found guilty in 2000 of kidnapping and murdering 20-year-old Jesus Montoya. During his original trial, police failed to supply both defense and prosecuting attorneys with the first of three written statements made by Newton's co-defendant, who testified against him. The newly-released evidence would have called into question the credibility of the co-defendant.

⁹ "Killer's Penalty Now is Life Term," *San Antonio Express-News*, February 1, 2010

¹⁰ "Convicted Killer Given Life Term," *San Angelo Standard Times*, June 29, 2010

Dallas County District Attorney Craig Watkins subsequently stated that his office would not retry the case but rather had reached a plea agreement in which Newton pled guilty to capital murder and attempted capital murder of a police officer in exchange for two stacked life sentences.¹¹

In addition, three inmates died in prison this year: **Sheldon Ward** (May 13, 2010); **Ronnie Neal** (June 12, 2010); and **Ronald Chambers** (November 12, 2010). Chambers was the state's longest-serving death row inmate, arriving in 1975 for the murder of Mike McMahan. In 2008, he was granted a fourth sentencing hearing by the U.S. 5th Circuit Court of Appeals. The State appealed the decision to the U.S. Supreme Court, but the Justices declined to review it. The 5th Circuit found that jurors in Chambers' third death penalty trial may have received faulty instructions that prevented them from properly considering mitigating factors that might have rendered the death penalty inappropriate. Chambers died in prison in Dallas County, where he was awaiting a new sentencing hearing in which the district attorney's office once again planned to seek the death penalty.

Exonerations

On October 27, 2010, **Anthony Graves** walked out of the Burleson County Jail after spending 18 years in prison – including 12 years on death row – for a crime he did not commit. Prosecutors dropped all charges against Graves and declared him innocent after conducting their own investigation of the case.

Anthony Graves was accused of murdering six people, including four children, in Somerville, Texas in 1992. He maintained his innocence since his arrest. There was no physical evidence linking Graves to the crime and no motive. He had three alibi witnesses who could confirm he was present in his mother's apartment at the time the murders took place.

The sole witness against him was Robert Carter, who confessed to and was executed for the murders in 2000. Under pressure to name an accomplice in the slaying of Bobbie Davis, her daughter, and her four grandchildren, Carter (the father of one of the slain children), identified Graves, a man he barely knew. Carter recanted his testimony against Graves three days after his arrest, and again several more times over the years, including while strapped to the gurney in the death chamber.

Faulty eyewitness identification, lack of recorded interrogation by police officers, junk science, and political pressure to "catch the killer", combined with substandard indigent defense, all led to Graves' conviction despite the lack of any evidence linking him to the crime. In 2002, the Innocence Project became aware of his case and worked with him to secure legal representation and to petition for a fair trial where key evidence, such as a deposition from Carter confessing that he had lied about Graves' involvement in the case, could be considered.

In 2006, the 5th Circuit Court of Appeals ruled that Graves' 1994 murder conviction was improperly obtained because the district attorney did not disclose all of Robert Carter's statements to the defense and had elicited false statements from two witnesses. The Burleson County District Attorney's office decided to retry him and planned to seek the death penalty again. Graves spent another four years in the Burleson County Jail, awaiting a trial that was set to commence in February 2011. Yet in a surprising turn of events, on October 27, 2010, prosecutors dropped all charges against him and declared Graves a free man.

As reported in the *Houston Chronicle*, Special Prosecutor Kelly Siegler said:

After months of investigation and talking to every witness who's ever been involved in this case, and people who've never been talked to before, after looking under every rock we could find, we found not one piece of credible evidence that links Anthony Graves to the commission of this

¹¹ "Man's death penalty set aside in '99 kidnap-slaying in Dallas," *Dallas Morning News*, November 18, 2010

capital murder. ... This is not a case where the evidence went south with time or witnesses passed away or we just couldn't make the case anymore. He is an innocent man.¹²

Anthony Graves is the 12th person in Texas to be wrongfully convicted and removed from death row and the 138th nationwide. He now is pursuing financial compensation under the Tim Cole Act. If approved, he is eligible for \$80,000 for each year of wrongful incarceration, as well as college tuition.

Potential Wrongful Executions

Claude Jones

On November 11, 2010, *The Texas Observer* reported on the results of DNA testing of evidence that was used to convict and execute **Claude Jones** on December 7, 2000. The one-inch strand of hair was the only physical evidence tying Jones to the crime scene and murder of liquor store owner Allen Hilzendager. This past June, State District Judge Paul Murphy granted a motion from The Innocence Project and the *Observer* and ordered local prosecutors to turn over the hair sample for testing. According to the *Observer*, the DNA results show that the hair belonged to the victim, not to Jones, as a forensic expert testified during his 1990 trial.

In his earlier reporting on the story, Dave Mann of the *Observer* noted that "questions about Jones' guilt have long lingered."¹³ The case against him consisted of fuzzy eyewitness testimony and the questionable testimony of two other defendants, both of who were spared the death penalty in exchange for their testimony (and one of whom later recanted). Jones steadfastly protested his innocence and claimed that he never entered the store.

While the DNA results do not exonerate Jones, they raise serious questions about the reliability of his conviction. His execution was the final death penalty case that George W. Bush presided over as Governor of Texas. According to the *Observer*, Jones filed a request for a stay of execution in order to conduct DNA tests on the strand of hair, but that information was not conveyed to former Governor Bush by the his staff in the General Counsel's office.¹⁴ Bush had previously declared his openness to DNA testing in death penalty cases.

Cameron Todd Willingham

The case of **Cameron Todd Willingham** continued to garner headlines in 2010 and proceeded in fits and starts. Willingham was executed by the State of Texas on February 17, 2004. He had been convicted and sentenced to death for setting a fire to his Corsicana home in 1991 that killed his three young daughters. Nine fire experts who have examined the case since the time of conviction all have concluded that there was no evidence to support the finding of arson.

In April, the Texas Forensic Science Commission established a four-person subcommittee to examine the case and report its conclusions to the full commission. Because of its small size, the subcommittee is not subject to state laws requiring open meetings and is conducting its work in private. A preliminary report issued by the subcommittee in July 2010 admitted "flaws" in the science used to convict Willingham but found that arson investigators did not commit misconduct or negligence in relying on outdated standards at the time.

Recent criticism of the commission has focused on members' reliance on written reports rather than direct engagement and questioning of forensic experts, including the expert they hired specifically to investigate this case, Dr. Craig Beyler. In September, commission members declined to endorse a final report on the Willingham investigation but rather decided to invite a number of experts to attend a

¹² "Prisoner ordered free from Texas' death row", *Houston Chronicle*, October 28, 2010

¹³ "DNA Could Show if Claude Jones Was Wrongly Executed," *Texas Observer*, June 15, 2010

¹⁴ "Texas Observer Exclusive: DNA Tests Undermine Evidence in Texas Execution," *Texas Observer*, November 11, 2010

special meeting. That meeting, originally scheduled to take place in October of 2009, will occur on January 7, 2011.

On another front, on October 14, 2010, State District Judge Charlie Baird conducted a court of inquiry into whether Cameron Todd Willingham was wrongfully executed and whether state officials committed a crime in how they handled his case prior to the execution. According to news reports, lawyers filed a petition on behalf of Willingham's relatives asking Baird to hold an inquiry into the case in order "to restore Willingham's reputation and to probe whether state officials committed official oppression in their handling of his case before the execution."¹⁵ Baird conducted a similar court of inquiry in 2009 in the case of Timothy Cole, who died in prison before DNA testing proved his wrongful conviction.

Judge Baird heard testimony from two fire experts, who discussed the flaws in the arson evidence used to convict Willingham. The Third Court of Appeals of Austin has blocked any potential ruling on the case, however, in response to a motion filed by Navarro County District Attorney Lowell Thompson.

U.S. Supreme Court Developments

On October 13, 2010, the U.S. Supreme Court heard arguments in the case of *Skinner v. Switzer* to determine whether Texas death row inmate Hank Skinner can seek access to post-conviction DNA testing through the federal Civil Rights Act. Texas officials have refused to release key pieces of evidence gathered at the crime scene in 1993 for testing. Whether a person can seek access to DNA testing under the Civil Rights Act depends solely on where he files a claim. Specifically, six circuit courts allow such suits, two circuit courts do not, and the rest have not faced the question. A decision in the case is expected in the spring of 2011.

Legislative Developments

This summer, the Timothy Cole Advisory Panel on Wrongful Convictions concluded its work to study the prevention of wrongful convictions. The panel was established by the state legislature in 2009 and named in memory of Timothy Cole, who died in prison while serving time for a crime he did not commit. Cole was later exonerated by DNA evidence; he received a posthumous pardon from Texas Governor Rick Perry in March of 2010. More than 40 people in Texas have been exonerated based on DNA evidence – more than any other state. According to experts, mistaken eyewitness identification is the leading cause of wrongful conviction.

In August, the advisory panel approved a package of recommendations aimed at safeguarding against wrongful convictions. These include:

- Recording custodial interrogations
- Developing formal procedures and guidelines for eyewitness identification
- Adopting a discovery policy that is mandatory, automatic, and reciprocal
- Providing greater access to post-conviction DNA testing

According to the *Fort Worth Star-Telegram*, "the 11-member commission backed away from recommending the creation of a statewide innocence commission armed with subpoena powers but instead called for augmenting the work of state-funded innocence projects at four public universities: Texas Tech, the University of Houston, the University of Texas at Austin and Texas Southern University."¹⁶

¹⁵ "Judge OKs hearing on Willingham execution," *Dallas Morning News*, September 28, 2010

¹⁶ "Timothy Cole Advisory Panel on Wrongful Convictions suggests more actions," *Fort Worth Star-Telegram*, August 13, 2010

Advances in Legal Representation

On June 9, 2010, the Texas Task Force on Indigent Defense approved a modest expansion of the West Texas Regional Public Defender for Capital Cases, which was created in 2007 and is based in Lubbock. The office currently covers 85 counties in West Texas and provides legal representation to indigent defendants facing the death penalty through attorneys and investigators with specialized training in capital cases. Officials estimate that the program has saved the 70 participating counties \$637,000 in the first two years. Of the 24 cases the West Texas office has handled since its inception, only 1 defendant has been sentenced to death.

The task force approved a one-year, \$2.2 million grant that will expand the program by 55 counties in far west Texas and south Texas. The 140 counties now eligible under the plan are not liable for the cost of defending those facing the death penalty. Under the proposal, state funding to the office will gradually decrease over six years, and counties' contributions will increase commensurately. Each county will contribute using a formula based on population and a 10-year average of capital cases, ranging from \$1,000 to \$350,000 per county. Officials eventually want to expand the program to include all 240 Texas counties with populations of less than 300,000.¹⁷

Also in June, state officials hired Brad Levenson to serve as the first director of the new Office of Capital Writs. This statewide office, created by the legislature in 2009, will employ specialized attorneys and investigators to help indigent death row inmates in state habeas cases. Previously, Levenson served as a deputy federal public defender in California and as a prosecutor in the California Attorney General's office.

This year, Harris County created its first Public Defender Office, which eventually will handle felony appeals, juvenile cases, adult felony trials and mental health cases. It received funding from the Texas Task Force on Indigent Defense. In November, county officials hired Alexander Bunin as the chief public defender. Harris County was the largest jurisdiction in the United States without any form of public defender system. Judges will still appoint defense attorneys in some cases under the new hybrid system.

Other Developments

Lethal Injection

This fall, news outlets began reporting on a nationwide shortage of sodium thiopental, the anesthetic used in lethal injections. Hospira Inc., the only U.S.-based company that manufactures the drug, blamed the shortage on unspecified problems with its raw-material suppliers. According to a company spokesman, new supplies of the drug will not be available until early next year.

The shortage led some states to postpone executions as their supplies of sodium thiopental dwindle or expire. Other states, including Arizona, have purchased the drug from an overseas supplier in Britain. On November 29, 2010, the British Government announced that it will place restrictions on the export of sodium thiopental after receiving complaints. The controls will require anyone who wishes to export the drug to have a license issued by the Export Control Organization.

Earlier in the fall, officials with the Texas Department of Criminal Justice stated that they had enough sodium thiopental on hand to proceed with the three executions then scheduled, though they refused to disclose exactly how much they had stockpiled. In November, upon orders from Texas Attorney General Greg Abbott, prison officials revealed that they had enough drugs on hand to execute 39 people, but that all doses of sodium thiopental will expire in March 2011. According to a spokesperson with the Texas Department of Criminal Justice, other states have approached Texas about sharing its drug supply with them but have been turned down.

According to the Associated Press, Hospira, a publicly traded company, sent a letter in March expressing its discomfort with the role its drug plays in the lethal injection protocol:

¹⁷ "Area defense office covers wider region," *Lubbock Avalanche-Journal*, June 10, 2010

'Hospira provides these products because they improve or save lives and markets them solely for use as indicated on the product labeling,' Kees Groenhout, clinical research and development vice president, said in a March 31 letter to Ohio, obtained by the AP. 'As such, we do not support the use of any of our products in capital punishment procedures.'¹⁸

Conclusion

The persistent decline in new death sentences illustrates growing acceptance of alternative punishments among both jurors and prosecutors, as the number of Texas counties investing in costly death penalty trials dwindles. Longstanding concerns about wrongful convictions and emerging evidence of wrongful executions continue to generate unparalleled scrutiny of the administration of the death penalty in Texas.

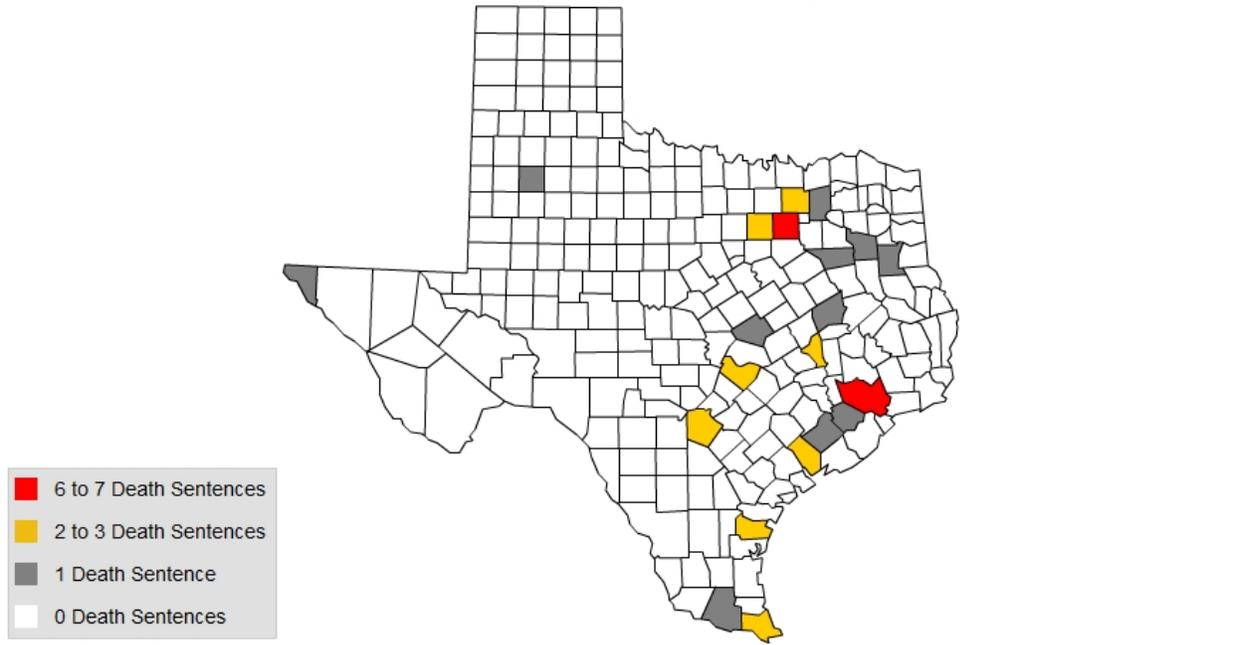
While Texas remained the nation's most active death penalty state, the number of executions dropped for the first time in recent years, as did Texas' overall share of executions occurring in the United States in a given year.

TCADP expects issues related to innocence, cost, arbitrariness, and fairness to be considered by the Texas Legislature when it reconvenes in January 2011 and to be the subject of ongoing debate among the public at large.

¹⁸ "Some US executions held up by shortage of drug," *Associated Press*, September 28, 2010

Appendix A

New Death Sentences by County, 2007-2010



Notes:

This information has been compiled from the Texas Department of Criminal Justice (TDCJ) and various news sources. Please note that these figures correspond with the county of conviction, as listed by TDCJ. These figures do not include resentences.

6 to 7 death sentences:

Dallas (7); Harris (6)

2 to 3 death sentences:

Bexar (3); Brazos (2); Cameron (2); Collin (2); Jackson (2); Nueces (2); Tarrant (3); Travis (3)

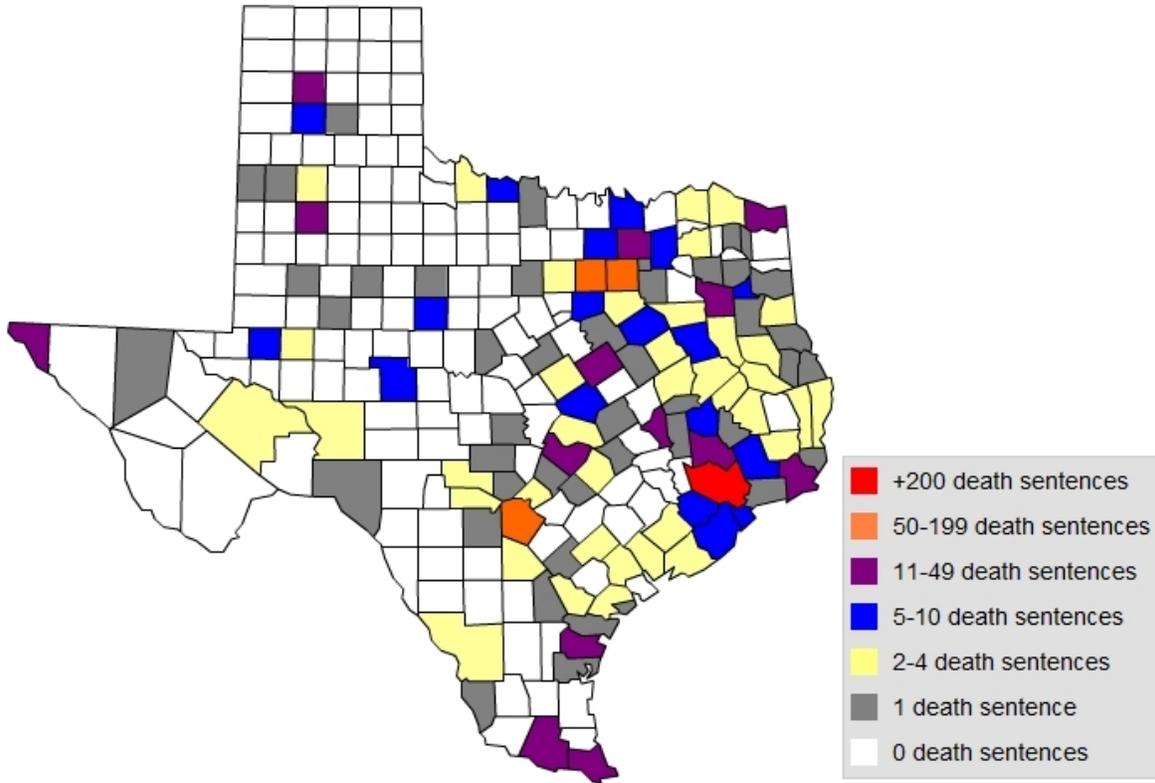
1 death sentence:

Bell; El Paso; Fort Bend; Henderson; Hidalgo; Hunt; Leon; Lubbock; Rusk; Smith; Wharton

Go to <http://tcadp.org/2007-2010-new-death-sentences/> to view this map online.

Appendix B

Death Sentences by County: 1976 - 2010



Notes:

This information has been compiled from the Texas Department of Criminal Justice (TDCJ) and various news sources. Please note that these figures correspond with the county of conviction, as listed by TDCJ, and do not capture all changes of venue from 1976 to 2010.

These figures do not include resentences. They do include the 273 people who have been removed from death row due to exoneration, death in custody, or a reduced sentence (as of November 22, 2010, according to TDCJ). This accounts for the discrepancy that often appears between the number sentenced and the number awaiting execution. For a complete list of offenders who have been removed from death row, by county, contact TCADP Program Coordinator Vicki McCuistion at info@tcadp.org or 512-441-1808.

Go to <http://tcadp.org/death-sentences-by-county1976-2010/> to view this map online.



Texas Coalition to Abolish the Death Penalty
2709 S. Lamar Blvd; Austin, TX 78704
512-441-1808
www.tcadp.org