

## Texas Death Penalty Developments in 2019: 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 the public and elected officials about issues associated with the death penalty over the past year. The report, which includes illustrative charts and graphs, cites these recent death penalty developments in Texas:

- Texas juries rejected the death penalty in 50% of the cases presented to them this year. Four capital murder trials in which prosecutors sought the death penalty resulted in death sentences, while four other capital trials resulted in sentences of life in prison without the possibility of parole.
- Prosecutors from both rural and urban counties removed the death penalty as a sentencing option in nearly a dozen cases in which they had initially submitted a notice of intent to seek death.
- New death sentences remained in the single digits for the fifth year in a row.
- Only four counties in Texas account for more than one death sentence in the last five years. More than one-third of all death sentences imposed in this timeframe came from these four counties.
- Of the four men sentenced to death in Texas in 2019, two are people of color and two are white. Over the last five years, more than 70% of death sentences have been imposed on people of color; 38% of these death sentences were imposed on African-American defendants.
- Executions declined in 2019. The State of Texas put 9 people to death this year, compared with 13 executions in 2018. It was one of seven states responsible for the 22 executions nationwide in 2019.
- Fewer than half of the executions scheduled for 2019 were actually carried out. Twelve execution dates were withdrawn or stayed by state or federal courts. Of these, the Texas Court of Criminal Appeals granted six reprieves, including in the high-profile case of Rodney Reed.
- The cases of those put to death in Texas in 2019 raised troubling legal questions, with claims of innocence, ineffective assistance of counsel, and false testimony, among other issues.
- Two cases scheduled for execution in 2019 provoked abrupt revisions to the Texas Department of Criminal Justice's (TDCJ) Execution Procedure. At the beginning of April, TDCJ removed all chaplains from the execution chamber in response to a stay of execution granted by the U.S. Supreme Court to Patrick Murphy. Later that same month, TDCJ discontinued its practice of publishing the written last statements of inmates, after a single State Senator requested the change.
- Two longstanding cases from Harris County were resolved with sentences other than the death penalty. Marlin Nelson and Bobby Moore received reduced sentences and were removed from death row. After two trips to the U.S. Supreme Court in the past two years, Moore's sentence was commuted to life in prison due to his intellectual disability. Nelson's death sentence was overturned due to faulty jury instructions. A third individual, Ignacio Gomez, died in custody. Collectively, the three men spent nearly 90 years on death row.

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*Texas Death Penalty Developments in 2019: The Year in Review* is available online at <https://tcadp.org/get-informed/reports/>. Contact TCADP Executive Director Kristin Houlé for more information.

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## Texas Death Penalty Developments in 2019: The Year in Review

### Introduction

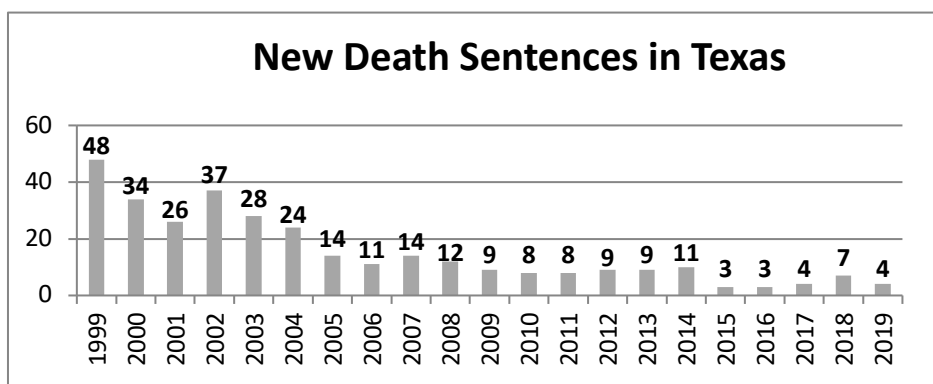
The death penalty landscape in Texas has changed significantly over the last 20 years, mirroring national trends. Death sentences have fallen from a peak of 48 death verdicts in 1999 to single digits for the past five years. The number of executions dropped this year as well, continuing a pattern of reduced use of the death penalty.

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

### Death Sentences

#### *New Death Sentences*

In 2019, juries rejected the death penalty in 50% of the capital trials in which prosecutors sought a death sentence. Juries condemned four individuals to death, according to data compiled from media sources and the Texas Department of Criminal Justice (TDCJ), keeping new sentences at historic low levels.



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

#### *Death Sentences by County*

Four different counties were responsible for the new death sentences in 2019: Harris; Smith; Tarrant; and Upton.

- In a case arising from Upton County that was tried in Nueces County, a jury sentenced 56-year-old Gary David Green to death on June 26, 2019. He was convicted of killing Upton County Deputy Billy “Bubba” Kennedy, Jr. in 2013. It was the first death sentence to come out of Upton County, which is south of Midland County in West Texas.
- On October 11, 2019, Ronald Haskell received the death penalty after he was convicted of the murders of Katie and Stephen Stay in 2014 in Spring; he also killed four of their children. In the first phase of the trial, the jury rejected his plea of not guilty by reason of insanity after deliberating for eight hours. It was the first time since 2004 that Harris County prosecutors sought the death penalty

for a white defendant. It also was the first death penalty trial prosecuted by the Harris County District Attorney’s Office under the administration of Kim Ogg, who was elected in November 2016.<sup>1</sup>

- A Tarrant County jury sentenced Hector Acosta to death on November 13, 2019. He was convicted of killing Erick Zelaya and Iris Chirinos in 2017. It was the first death sentence from Tarrant County since 2016.
- On November 20, 2019, a Smith County jury sentenced Dameon Mosley to death for killing Billy Dale Stacks while robbing a gas station in 2017. During the sentencing phase of the trial, Mosley’s attorneys presented evidence of his traumatic childhood. This was the second death sentence in Smith County since 2015.

A total of 17 Texas counties have imposed death sentences in the last five years. Of these, only four counties account for more than one new death sentence in this time period. More than one-third of all death sentences imposed by juries in the last five years came from these four counties. Notably, Dallas County does not appear on this list, as jurors there have imposed just one new death sentence since 2013. With 108 total death sentences since 1974, Dallas ranks second overall behind Harris County in use of the death penalty.

Texas Counties with More Than One Death Sentence in the Last Five Years							
	2015	2016	2017	2018	2019	Total 2015-2019	Total Since 1974
<b>Harris</b>	0	0	0	1	1	2	296
<b>Tarrant</b>	0	1	0	0	1	2	75
<b>Smith</b>	1	0	0	0	1	2	24
<b>Walker</b>	0	0	1	1	0	2	10
<b>Total</b>	1	1	1	2	3	8	405
<b>All Counties</b>	3	3	4	7	4	21	1,110

*Death Sentences by Race*

Of the four men sentenced to death in Texas in 2019, two are people of color and two are white.<sup>2</sup> Over the last five years, more than 70% of death sentences have been imposed on people of color; 38% of these death sentences were imposed on African-American defendants.

New Death Sentences by Race of Defendant						
	2015	2016	2017	2018	2019	Total Sentences by Race
<b>African-American</b>	0	3	1	3	1	8
<b>Hispanic</b>	1	0	0	3	1	5
<b>Asian/Other</b>	1	0	0	1	0	2
<b>Total People of Color</b>	2	3	1	7	2	15
<b>White</b>	1	0	3	0	2	6
<b>Total Sentences</b>	3	3	4	7	4	21

<sup>1</sup> The capital murder trial and death verdict for Ali Irsan in 2018 in Harris County was handled by special prosecutors.

<sup>2</sup> TDCJ lists Hector Acosta’s race as white instead of Hispanic.

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

- Nineteen of the last twenty defendants sentenced to death in Harris County are people of color: 15 are African-American; three are Hispanic; and one identifies with another race/ethnicity. As noted above, Ronald Haskell is the first white defendant in Harris County to receive a death sentence since November 2004, when serial killer Anthony Shore was sent to death row.<sup>3</sup>
- All five men sentenced to death in Tarrant County since 2012 are African-American or Hispanic.

While African-Americans comprise only 12.6% of the population of Texas, they constitute 43.9% of death row inmates, according to TDCJ. Hispanics comprise 26.6% of individuals on death row (39.1% of the population of Texas), and whites comprise 26.6% (42.6% of the Texas population).<sup>4</sup>

As of December 12, 2019, TDCJ lists 214 death row inmates, which includes six women.<sup>5</sup> This constitutes the smallest Texas death row population since 1987. More than one-third of these individuals were convicted in Harris County.<sup>6</sup> Texas has the third-largest death row population in the nation, after California (732) and Florida (340). Texas's death row population peaked in 2000, when more than 450 individuals were awaiting execution.

## **Jury Rejections and Other Non-Death Outcomes**

### *Jury Rejections*

Since 2015, juries have rejected the death penalty in 40% of the cases in which prosecutors sought a death verdict at trial. This year, the rate was 50%, or four out of eight cases. The defendants in three of these cases are people of color.

- In the first capital murder trial involving the death penalty in Texas this year, a Nueces County jury sentenced Arturo Garza to life in prison without parole on March 14, 2019. He had pled guilty to killing his pregnant girlfriend, Susanna Eguia, in 2015. It was the third consecutive time since 2015 a Nueces County jury has rejected the death penalty in a capital case.
- On September 24, 2019, after several hours of deliberation, a Denton County jury sentenced Daniel Greco to life in prison without the possibility of parole after finding him guilty of capital murder. Denton County prosecutors had sought the death penalty for Greco, a resident of Little Elm who was convicted of killing a pregnant woman, Anjanette Kristina Harris, in 2016. The trial was postponed twice; the jury selection process took two months over the summer. According to the *Denton Record-Chronicle*, the jury responded "no" on the question of future dangerousness, finding that Greco would not be a violent threat to other inmates in prison.<sup>7</sup> It was the first time District

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<sup>3</sup> Shore was executed in January 2018.

<sup>4</sup> See [http://www.tdcj.state.tx.us/death\\_row/dr\\_gender\\_racial\\_stats.html](http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html) for details.

<sup>5</sup> This figure does not yet include three inmates: Gustavo Tijerina-Sandoval, who was sentenced to death on June 5, 2018 but has not been "received" on death row; Hector Acosta, sentenced to death on November 13, 2019; and Dameon Mosley, sentenced on November 20, 2019.

<sup>6</sup> TDCJ counts 78 inmates from Harris County as of December 12, 2019.

<sup>7</sup> "Greco avoids death penalty, sentenced to life in prison without parole," *Denton Record-Chronicle*, September 24, 2019.

Attorney Paul Johnson had sought the death penalty since the 2011 case of Tony Burrell. (In 2014, Burrell pled guilty to capital murder and was sentenced to life without parole.)

- On October 7, 2019, a Fort Bend County jury rejected the death penalty for LaMelvin Johnson. He was convicted of fatally shooting three men—Harvey Simmons, Johnny Simmons, and Donntay Borom—at a carwash after losing his job in 2013. After a week-long trial, the jury deliberated for six hours and returned with a sentence of life in prison without parole. This was the first capital murder trial for Fort Bend County District Attorney, Brian Middleton, who was elected in November 2018. A jury in Fort Bend County has not imposed a death sentence since 2012.
- On November 12, 2019, a Tarrant County jury rejected the death penalty and sentenced Burnches Mitchell to life in prison without the possibility of parole. Mitchell was convicted of the shooting death of Khrystophir Scott in January 2017. It was the third time a Tarrant County jury has rejected the death penalty since 2015; two other men were sentenced to death in this time period.

#### *Death Penalty Off the Table*

Prosecutors in both rural and urban counties across the state removed the death penalty as a sentencing option in nearly a dozen cases after initially submitting notices of intent to seek death. Several of these cases were resolved shortly before the jury selection process or trial proceedings were set to begin. All but two of the defendants in these cases are people of color (seven are Hispanic and two are African-American).

- In Willacy County, prosecutors entered a plea agreement with Ismael Hernandez-Vallejo on January 15, 2019. Hernandez-Vallejo was charged with shooting and killing Javier Vega Jr. and injuring Javier Vega Sr. in 2014. He received two 50-year prison sentences for murder and attempted capital murder. As part of the plea deal, Hernandez-Vallejo agreed to testify against his co-defendant, Gustavo Tijerina-Sandoval, in any appeals or re-trials. Tijerina-Sandoval was sentenced to death in 2018. Hernandez-Vallejo also agreed to waive all appeals.
- On January 30, 2019, Rodolfo Arellano pled guilty to killing his estranged wife, Elizabeth Arellano, in Tarrant County in 2016. Prosecutors were preparing to seek the death penalty when defense attorneys approached them with a proposed plea agreement. Arellano will serve life in prison without the possibility of parole.
- On February 8, 2019, Reginald Campbell accepted a plea deal from Grayson County prosecutors and was sentenced to life in prison without the possibility of parole. Campbell was charged with killing hotel clerk Brandon Hubert during a robbery in 2017. In exchange for the plea, prosecutors agreed not to seek the death penalty.
- In Brown County, Ryan Riggs accepted a plea deal on February 15, 2019, receiving a sentence of life in prison without the possibility of parole for the 2016 murder of Chantay Blankinship. Riggs made the plea in exchange for prosecutors not seeking the death penalty; he agreed to waive any right to appeal his conviction.
- In Tom Green County, Fernando Lavaris and Elisa Losoya pled guilty to first-degree murder as part of agreements they made separately with prosecutors in April and May of this year. Lavaris and Losoya

were indicted for capital murder for their roles in the death of 69-year-old William Valdez in 2015; prosecutors planned to seek the death penalty. Both Lavaris and Losoya were sentenced to life in prison and ordered to pay \$7,236.80 in restitution. In 2018, two other co-defendants in the case also pled guilty to lesser charges of murder and were sentenced to life in prison and 40 years, respectively.

- In July, prosecutors in Nueces County declined to seek the death penalty for Joseph Tejada, who is accused of killing Breanna Wood in 2017. According to the *Corpus Christi Caller Times*, the decision to not seek the death penalty came after prosecutors spoke to Wood's family.<sup>8</sup> Tejada is set to go to trial in January of 2020. If he is convicted of capital murder, he will be sentenced to life in prison without the possibility of parole.
- On July 10, 2019, Brian Flores pled guilty to capital murder and was sentenced to life in prison without parole for killing Joshua Rodriguez and Victoria Dennis in San Antonio in 2015. Last year, Visiting Judge Susan Reed declared a mistrial in Flores's case after his defense attorney, Ed Camara, suffered a concussion and was deemed unable to proceed with the jury selection process due to his injuries. Bexar County District Attorney Joe Gonzales, who was elected in November 2018, had planned to seek the death penalty for Flores in a new trial before reaching the plea agreement. Jurors in Bexar County have imposed just two new death sentences since 2009.
- On July 17, 2019, Sarah Nicole Henderson agreed to plead guilty to two counts of capital murder in exchange for prosecutors dropping the death penalty. She was sentenced to life in prison without parole for killing her two young daughters in Henderson County in 2017. Her trial had been scheduled to begin on July 30, where she was expected to plead not guilty by reason of insanity. District Attorney Mark Hall noted that the plea agreement "...brings some finality to a case where even if she had received the death penalty, it could take decades and endless court hearings, legal briefs and additional expert evaluations before actually carrying out the sentence."
- In Smith County, Gustavo Zavala-Garcia accepted a plea deal from the District Attorney in August and was sentenced to life in prison without parole. Zavala-Garcia was charged with killing Kayla Gomez-Orozco in 2016. The District Attorney's Office intended to seek the death penalty, with jury selection scheduled to begin in January 2020, but experts for both the defense and prosecution agreed that Zavala-Garcia is intellectually disabled. U.S. Supreme Court constitutional law exempts individuals with intellectual disability from being executed.
- On December 11, 2019, the McLennan County District Attorney's Office announced it was no longer seeking the death penalty for Keith Spratt. According to the *Waco Tribune*, the announcement came just two days before the jury selection process was set to begin.<sup>9</sup> Spratt is charged with killing Joshua Ladale Pittman in December 2015 in a murder-for-hire scheme. His co-defendant, Tyler Sherrod Clay, was convicted of capital murder and sentenced to life in prison without parole in 2018. Prosecutors did not pursue the death penalty for Clay, who allegedly hired Spratt to kill Pittman. If Spratt is convicted of capital murder when his case goes to trial in March 2020, he will be sentenced to life in prison without the possibility of parole.

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<sup>8</sup> "Death penalty taken off table against Breanna Wood murder suspect," *Corpus Christi Caller Times*, July 2, 2019

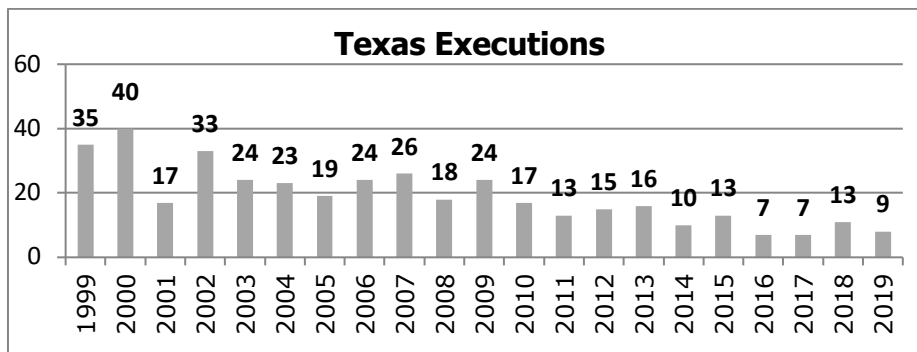
<sup>9</sup> "DA rules out death penalty in Spratt capital murder trial," *Waco Tribune*, December 12, 2019

## Executions

The State of Texas put nine people to death in 2019, accounting for 41% of U.S. executions this year. It was one of seven states responsible for executions in 2019. See Table 2 on page 19 for a list of individuals put to death in 2019. Seven executions are scheduled already for 2020.

The State of Texas has executed 567 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.

U.S. Executions in 2019	
<b>Texas</b>	<b>9</b>
Tennessee	3
Alabama	3
Georgia	3
Florida	2
Missouri	1
South Dakota	1
<b>Total</b>	<b>22</b>



Attorneys for the individuals put to death in Texas in 2019 raised legal challenges related to innocence, ineffective assistance of counsel, and intellectual disability, among other claims. Three individuals – Billie Wayne Coble, Robert Sparks, and Travis Runnels – were executed despite the fact that a state’s witness, A.P. Merillat, provided false testimony related to the issue of future dangerousness in all three cases.

### Execution Case Summaries

- On January 30, 2019, the State of Texas carried out the nation’s first execution of the year. Robert Jennings was put to death for killing Houston Police Officer Elston Howard during a botched robbery at an adult bookstore in 1988. He was set to be executed in September 2016 but received a stay from the Texas Court of Criminal Appeals to review improper jury instructions during the punishment phase of his 1989 trial, which took place just as the U.S. Supreme Court was ruling that Texas’s capital sentencing statute must allow jurors to consider mitigating evidence.

As he faced execution in January, Jennings filed an appeal with the U.S. Supreme Court claiming he received ineffective counsel during his trial and the appellate process. The Court declined to consider his appeal. Jennings was 61 years old at the time of his execution.

- On February 28, 2019, the State of Texas executed Billie Wayne Coble. At 70 years of age, he had spent nearly 30 years on death row and was the oldest person put to death since Texas resumed executions in 1982. Coble was convicted and sentenced to death for killing his in-laws, Robert and Zelda Vicha, and their son, police Sergeant Bobby Vicha, in 1989 at the family’s home in McLennan County. His 2007 appeal to the U.S. Court of Appeals for the Fifth Circuit resulted in the dismissal of his death sentence. After a new punishment hearing in 2008, a jury re-sentenced him to death. Coble’s defense team argued that the expert witness called to testify regarding future



dangerousness in his 1990 trial and 2008 re-trial, A.P. Merillat, had no reliable methodology, and the CCA agreed. The Court found that the jury's sentencing verdict could stand, however.

As Coble faced execution in February, his attorney filed a petition with the U.S. Supreme Court claiming the Justices' 2018 ruling in *McCoy v. Louisiana* should apply to his case. In that decision, the Justices ruled defendants have "the right to insist that counsel refrain from admitting guilt, even when counsel's experience-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty."<sup>10</sup> Coble similarly objected to his trial attorneys' strategy and claimed they filed notice they would raise an insanity defense but instead conceded his guilt. The U.S. Supreme Court declined to consider his final appeal.

- On April 24, 2019, John King was executed for his role in the racially-motivated dragging death of James Byrd, Jr. in 1998 in Jasper County. He had been sentenced to death in 1999 and was the second person executed for killing Byrd.<sup>11</sup> King filed an appeal with the CCA asking the court to review his case in light of the U.S. Supreme Court's ruling in *McCoy v. Louisiana*, which found that defense counsel may not concede a client's guilt over a client's clear objection. By a ruling of 5 to 4, the CCA dismissed the application as an abuse of the writ and denied King's motion for a stay of execution. In separate concurring opinions, Judges Yeary and Newell questioned whether *McCoy* constituted new law that applied retroactively to cases that were already final when the opinion was announced. A dissenting opinion by Judge Keasler, which was joined by Judges Hervey, Richardson, and Walker, urged the Court to take more time to consider King's claim of innocence.

King declined to deliver a spoken last statement. Instead, he provided a written last statement that TDCJ gave to reporters after his execution. This provoked the ire of State Senator John Whitmire, who chairs the Senate Criminal Justice Committee, and he demanded that written last words of the executed not be read or published after their death. Subsequently, on April 30, 2019, TDCJ revised its long-standing practice so that it no longer provides written last statements to the public; last words spoken on the gurney are still allowed and made public.

- The State of Texas executed Larry Swearingen on August 21, 2019 for the 1998 rape and murder of 19-year-old Melissa Trotter in Montgomery County. He had faced five other serious execution dates. During his 20 years on death row, Swearingen maintained his innocence and protested his conviction, which was based largely on circumstantial evidence.

Trotter's body was discovered in the Sam Houston National Forest on January 2, 1999, nearly a month after she had disappeared from the campus of Montgomery Community College, where she was a student. Prosecutors originally theorized that she had been dead for 25 days when her body was found, but further analysis by pathologists suggest this timeframe was impossible based on the condition of her body. The medical examiner who conducted an autopsy on Trotter later changed her opinion about the time of death. Under her revised timeline, Swearingen could not have committed the murder as he was in police custody on unrelated charges for the three weeks preceding the discovery of Trotter's body.

Swearingen's attorneys filed numerous appeals over the years seeking DNA testing of items from the crime scene. As his August execution date approached, the CCA and the U.S. Court of Appeals

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<sup>10</sup> See [https://www.supremecourt.gov/opinions/17pdf/16-8255\\_i4ek.pdf](https://www.supremecourt.gov/opinions/17pdf/16-8255_i4ek.pdf).

<sup>11</sup> Lawrence Brewer was executed on September 21, 2011.

for the Fifth Circuit denied his motions for a stay of execution without considering the merits of the claims raised. The U.S. Supreme Court declined to consider his appeal.

- On September 4, 2019, the State of Texas executed Billy Crutsinger for killing 89-year-old Pearl Magouirk and her daughter, 71-year-old Patricia Syren, during a robbery in Fort Worth. He had been convicted in 2003. In 2015, the U.S. Supreme Court refused to review Crutsinger's appeal in which he argued he had received deficient legal help at trial. Both the CCA and the U.S. Court of Appeals for the Fifth Circuit denied his motions for a stay based on the same claim. Crutsinger filed a final appeal with the U.S. Supreme Court, claiming the Texas Department of Public Safety had recanted and revised critical evidence used to convict him. The Court denied his motion to stay the execution.
- On September 10, 2019, the State of Texas executed Mark Soliz for killing Nancy Weatherly during a crime spree in Johnson and Tarrant Counties in 2010. His co-defendant, Jose Ramos, had pled guilty and was sentenced to life in prison without parole. Soliz appealed to the CCA with a claim that, because he suffered from Fetal Alcohol Spectrum Disorder (FASD), he should be categorically exempted from the death penalty on the grounds that FASD is the "functional equivalent" of conditions already recognized as exemptions to the death penalty, such as intellectual disability. The CCA denied his motion for a stay.
- The State of Texas executed Robert Sparks on September 25, 2019 after the U.S. Supreme Court refused to consider his final appeal. Sparks was convicted and sentenced to death for killing his stepsons, Raeqwon and Harold, and his wife, Chare Agnew, in 2007 in Dallas. Sparks had told investigators that he believed his wife was poisoning him. The CCA denied a motion to stay the execution based on a claim of intellectual disability. In his final appeal to the U.S. Supreme Court, Sparks argued that the State's expert, A.P. Merillat, provided false testimony regarding his prison classification if a jury chose life without parole rather than a death sentence. Sparks also claimed that a bailiff who wore a homemade necktie depicting an image of a syringe at the trial unfairly biased the jury. The Court declined to consider either of these issues.
- The State of Texas executed Justen Hall on November 6, 2019. He had been sentenced to death by an El Paso County jury in 2005 for the murder of Melanie Billhartz three years earlier. Hall had asked to give up his appeals at several points during his time on death row. Although his lawyers sought to evaluate his competency, Hall refused to have any contact with them for the past two years. The attorneys argued this signified a drastic decline in his mental state. Hall was the first person executed from El Paso since 2010. More than 30 other individuals have been executed by the State of Texas after waiving their appeals.
- The State of Texas executed Travis Runnels on December 11, 2019. He was sentenced to death in 2005 for killing Stanley Wiley, a correctional officer at the Clements Unit where Runnels was an inmate. The U.S. Supreme Court declined to consider his final appeal regarding the false testimony of one of the state's witnesses at his trial.

Runnels accepted responsibility for his actions and pled guilty to capital murder. During the punishment phase of his trial, however, his trial attorney failed to call a single witness or present any evidence on his behalf, despite the existence of extensive and compelling mitigation that could have provided the jury with a reason why his life should be spared.

This failure was compounded by the State's presentation of witness A.P. Merillat, who provided the jury with a patently false description of what Runnels' life would look like if he were sentenced to life rather than death. Merillat described a prison environment that would allow Runnels access to both correctional staff and other inmates. His false testimony misled jurors into believing Runnels would essentially be a free man within the confines of the prison if they sentenced him to life, and therefore the only way to prevent him from causing future violence was to send him to death row. In fact, the prison classification guidelines required strict conditions of confinement for individuals convicted of capital murder and sentenced to life in prison.

Of the men executed in 2019, Mark Soliz spent the least amount of time on death row, serving seven years before his execution. Robert Jennings and Billie Wayne Coble spent 30 years on death row. The average amount of time spent on death row for the nine men executed in 2019 was 16 years.

The youngest person put to death was Mark Soliz at age 37. Billie Wayne Coble was the oldest person put to death in Texas since the resumption of executions in 1982; he was 70 years old at the time of his execution in February. Three men executed in 2019 were over the age of 60.

#### *Executions by Race*

Of the nine men put to death by the State of Texas in 2019, one was Hispanic, three were African-American, and five were white. Since 1982, the State of Texas has executed 249 individuals who were white, 206 who were African-American, 108 who were Hispanic, and 4 who had another racial identity.

#### *Executions by County*

In 2019, no county was responsible for more than one execution, though several had more than one execution scheduled. The jurisdictions responsible for executions this year were Dallas, El Paso, Harris, Jasper, Johnson, McLennan, Montgomery, Potter, and Tarrant.

Dallas County accounts for a total of 61 executions since 1982; Tarrant County accounts for 42. Harris County alone accounts for 130, more than any state except Texas.

#### **Stays of Execution and Dates Withdrawn**

Nine individuals scheduled for execution in 2019 received reprieves. Three of these men – Dexter Johnson, Ruben Gutierrez, and Patrick Murphy – received multiple reprieves after their executions were rescheduled. Six reprieves were granted by the Texas Court of Criminal Appeals, while four came from federal courts, including an eleventh-hour stay of execution from the U.S. Supreme Court. Two execution dates were withdrawn by the trial courts. The grounds for the stays included intellectual disability claims, religious discrimination, ineffective assistance of counsel, and evidence of actual innocence.

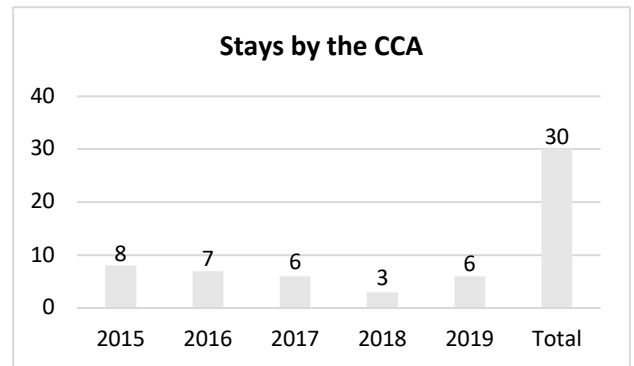
#### *Stays of Execution*

- On January 14, 2019, the CCA stayed the execution of Blaine Milam to review his case in light of recent changes to intellectual disability law. Milam was set to be executed on January 15 for the 2008 death of Amora Carson in Rusk County.

- The CCA granted a stay of execution to Mark Robertson on April 8, 2019. He was scheduled to be executed on April 11 for the 1989 murder of Edna Brau in Dallas County. The court granted the stay on the grounds that Robertson’s trial lawyer used racist presumptions to exclude black jurors.
- On April 30, 2019, a federal judge granted Dexter Johnson a stay to allow his newly-appointed lawyer time to review the case and investigate any undeveloped claims. He was scheduled to be put to death on May 2, 2019 for the murders of Maria Aparece and Huy Ngo in Harris County in 2006. Johnson was 18 at the time of the crime.

Johnson’s execution was rescheduled for August 15, 2019. On August 14, however, the U.S. Court of Appeals for the Fifth Circuit granted a stay based on evidence of his intellectual disability. A three-judge panel issued an 18-page opinion finding that under recent case law and intellectual disability standards, Johnson’s impairment disqualifies him for execution. The CCA had denied Johnson’s motion for a stay, as well as his habeas petition, without reviewing the merits of the claims he raised, including evidence of his intellectual disability and the false and misleading testimony of a State’s witness at trial. The Fifth Circuit’s ruling sent the case back to the district court to investigate the claim of intellectual disability.

- The CCA stopped the execution of Stephen Barbee on September 23, 2019, in response to the U.S. Supreme Court’s decision in *McCoy v. Louisiana* (2018). The Justices ruled in *McCoy* that “a defendant has the right to insist that counsel refrain from admitting guilt, even when counsel’s experience-based view is that confessing guilt offers the defendant the best chance to avoid the death penalty.”<sup>12</sup> During his trial, Barbee’s lawyers unexpectedly conceded his guilt. He had been scheduled to be executed on October 2, 2019 for killing Lisa and Jayden Underwood in 2005 in Tarrant County.



- On October 4, 2019, the CCA stayed the execution of Randy Halprin, who was set to be put to death on October 10. Last year, evidence came to light that Halprin’s 2003 trial was tainted by the anti-Semitic bias of Dallas Judge Vickers Cunningham. Halprin, who is Jewish, claims this bias violated due process and his right to the free exercise of religion. The CCA remanded his claim to the convicting court for review.

Halprin was convicted of capital murder and sentenced to death as a party in connection with the killing of Irving Police Officer Aubrey Hawkins during the robbery of a sporting goods store on December 24, 2000. He and six others had escaped from a maximum-security prison south of San Antonio earlier that month. Halprin and Patrick Murphy (see below) are the only members of the so-called “Texas 7” who are still alive.<sup>13</sup>

<sup>12</sup> As noted in the section above, two other men with execution dates this year raised claims related to *McCoy*. The courts did not consider those claims, however, and the men were put to death.

<sup>13</sup> Four of the “Texas 7” have been executed; one man killed himself to avoid capture.

- On October 22, 2019, the CCA granted a stay of execution to Ruben Gutierrez after his attorneys challenged the validity of the execution warrant. He had been scheduled to be put to death on October 30. It was the third execution date Gutierrez has faced in just over a year. A July 31, 2019 execution date was withdrawn; a September 12, 2018 execution date was stayed by a federal district judge to give his newly-appointed attorneys time to review his case.

Gutierrez was convicted and sentenced to death for the 1998 robbery and murder of Escolastica Harrison in Brownsville (Cameron County). Over the two decades he has spent on death row, he has consistently maintained that he did not kill Harrison. Gutierrez has sought DNA testing for years, which the state has opposed.

- Patrick Murphy faced two serious execution dates this year. He was convicted of capital murder and sentenced to death in Dallas County in 2003. Along with Randy Halprin and four others, he was convicted of the murder of Irving Police Officer Aubrey Hawkins under Texas's law of parties, which holds a person criminally responsible for the actions of another if they enter into a conspiracy to commit a felony that results in a death, even if they do not participate in either the felony or the murder. According to his attorneys, Murphy did not want to take part in the robbery of the Oshman's sporting goods store and was waiting in front of the store in a parked vehicle. After informing his comrades that Office Hawkins had arrived on the scene, Murphy drove to a nearby apartment complex. The CCA denied Murphy's suggestion to reconsider his initial writ application challenging his conviction under the law of parties.

On March 28, 2019, two hours after his execution was set to begin, the U.S. Supreme Court granted a stay because Murphy's request to have a Buddhist priest instead of a Christian chaplain in the execution chamber had been denied by TDCJ. In concurring in the grant of application for a stay, Justice Kavanaugh wrote that such governmental discrimination against religion violates the Constitution.<sup>14</sup> Days after the U.S. Supreme Court granted the stay, TDCJ revised its Execution Procedure to remove all chaplains from the execution chamber.

Murphy was rescheduled to be put to death on November 13, 2019. On November 7, however, a federal district court judge stayed his execution, again on grounds of religious discrimination. Murphy argued that Texas's execution procedures still discriminate against non-Christian inmates. While all clergy are now barred from the execution chamber, chaplains who are employed by TDCJ have access to inmates up until the time they enter the chamber. Religious advisors not employed by TDCJ can only meet with inmates from 3:00 to 4:00 p.m. on the day of the execution. The U.S. Court of Appeals for the Fifth Circuit upheld the stay of execution; the state did not appeal to the U.S. Supreme Court.

- Rodney Reed received a stay of execution from the CCA on November 15, 2019, just five days before his execution date. Earlier that same day, the Texas Board of Pardons and Paroles recommended Texas Governor Greg Abbott grant Reed a 120-day reprieve. Reed, who is African-American, has been on death row for over 21 years and has maintained his innocence of the 1996 rape and murder of Stacey Stites, who is white. He was convicted and sentenced to death by an all-white jury in Bastrop County in 1998.

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<sup>14</sup> See [https://files.deathpenaltyinfo.org/legacy/files/pdf/PatrickMurphy\\_SCOTUS\\_Stay\\_of\\_Execution\\_2019-03-28.pdf](https://files.deathpenaltyinfo.org/legacy/files/pdf/PatrickMurphy_SCOTUS_Stay_of_Execution_2019-03-28.pdf).

Reed also faced a serious execution date in 2015. The CCA halted that execution, which was scheduled to take place on March 5, 2015, and issued a stay to consider new evidence of Reed's innocence, but an evidentiary hearing before an unelected senior judge resulted in a summary recommendation that the evidence did not warrant a new trial.

DNA evidence found on Stites was the only way investigators connected Reed to the crime. Reed testified he was involved in a casual relationship with Stites and the two of them had had consensual sex the night before her death. Multiple witnesses have now corroborated Reed's relationship with Stites. A mounting pile of evidence implicates Stites's former fiancé, Jimmy Fennell, in the murder. Reed's case gained national attention this year as more exonerating evidence was discovered. In its November 2019 ruling, the CCA ordered the case back to the trial court to consider Reed's claims of Brady violations, false testimony, and actual innocence.

#### *Dates Withdrawn*

Two execution dates were withdrawn in 2019:

- As noted above, the July 31, 2019 execution date for Ruben Gutierrez was withdrawn by the trial court.
- On October 3, 2019, a trial court judge granted a motion to withdraw the October 16 execution date for Randall Mays. The motion was granted to allow more time to properly review new medical records reflecting additional diagnoses of serious mental illness. Mays previously faced execution in 2015, but the CCA granted a stay after agreeing with Mays's lawyers that mental-health assessments were needed to determine if Mays, who had been previously committed to state mental hospitals and diagnosed pre-trial with an organic brain disorder, was competent to be executed. Mays was convicted and sentenced to death for fatally shooting Sheriff Deputies Paul Habelt and Tony Ogburn on his property in Henderson County in May 2007.

#### **Reduced Sentences and Individuals No Longer on Death Row**

Two individuals received reduced sentences and were removed from death row in 2019; one individual died in custody. Collectively, the three men spent nearly 90 years on death row.

#### *Reduced Sentences*

Two longstanding cases from Harris County were resolved with sentences other than the death penalty this year:

- In May, Marlin Nelson was resentenced to two life sentences plus 30 years in prison. Nelson had been sentenced to death for the 1987 murder of James Howard in Houston. In 2013, an appeals court determined he was entitled to a new sentencing hearing in light of a 2001 U.S. Supreme Court ruling, *Penry v. Lynaugh*. In that decision involving the Texas case of John Paul Penry, the Court found jurors must have an opportunity to fully consider and give effect to mitigating evidence in the punishment phase of death penalty trials. That decision resulted in new sentencing trials for dozens of individuals on death row. According to the *Houston Chronicle*, the Penry decision returned almost 20 cases to Harris County alone.<sup>15</sup> Many of these cases have resulted in sentences other than the death penalty.

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<sup>15</sup> "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014

- On November 6, 2019, after years of legal wrangling and two reversals by the U.S. Supreme Court, the Texas Court of Criminal Appeals commuted Bobby Moore's death sentence to life in prison due to his intellectual disability. Moore was sentenced to death in Harris County in 1980; he recently turned 60 years old and was one of the longest-serving death row inmates in Texas.

In March 2017, the U.S. Supreme Court ruled that the state of Texas must use current medical standards in determining whether a person is intellectually disabled and therefore exempt from execution. The Justices found the CCA had relied on outdated, non-scientific criteria in finding that Bobby Moore was not intellectually disabled, and they sent the case back to the CCA for further proceedings.

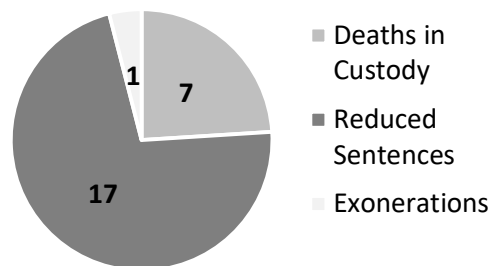
In 2018, a five-judge majority on the CCA once again relied on lay stereotypes and non-scientific criteria in rejecting Moore's claim that he is exempt from the death penalty because he is intellectually disabled. The case went back to the U.S. Supreme Court for a second time earlier this year, and again, the Justices reversed the CCA and ruled that Moore is intellectually disabled and should be exempt from the death penalty.

A total of seven individuals from Harris County have been removed from death row during District Attorney Kim Ogg's administration (January 2017 to the present).

#### *Deaths in Custody*

Ignacio Gomez was found unresponsive in his cell on death row on July 21, 2019. Gomez, who was a Mexican national, was 49 years old and had been on death row since 1998 for killing twin brothers, Michael and Matthew Meredith, and Tolbert Hatheway in El Paso in 1996. He reportedly suffered from mental illness and spent much of his time in the prison psychiatric ward. His lawyer claimed he was incompetent to be executed.

**Non-Execution Outcomes  
2015-2019**



Since 2015, a total of 25 individuals have been removed from death row in Texas for reasons other than execution, including sentence reductions (17), deaths in custody (7), or exonerations (1). More than half of these cases originated in Harris County. During this same timeframe, the State executed 49 people.

#### **Other Case Developments**

There were significant developments in several death penalty cases in 2019 on claims related to intellectual disability and prosecutorial misconduct, among other issues.

#### *Case Developments Related to Claims of Intellectual Disability*

In addition to the developments noted above in the cases of Blaine Milam, Dexter Johnson, and Bobby Moore, the CCA issued orders in two other cases with intellectual disability claims and remanded them to the trial courts:<sup>16</sup>

<sup>16</sup> In 2018, the CCA remanded six cases with intellectual disability claims in light of *Moore*.

- On September 11, 2019, the CCA remanded the case of Geronimo Gutierrez to Bexar County “to consider all of the evidence in light of the *Moore v. Texas* opinion and make a new recommendation to this Court on the issue of intellectual disability.” Gutierrez was sentenced to death for the robbery and murder of Rick Marin in 1999 in San Antonio.
- On September 18, 2019, the CCA remanded the case of Steven Butler to Harris County to consider evidence relevant to the question of intellectual disability. He was sentenced to death in 1988 for the robbery and murder of Velma Clemons at a dry-cleaning business two years earlier.

#### *Case Developments Related to Prosecutorial Misconduct*

On October 2, 2019, a majority of judges on the Texas Court of Criminal Appeals rejected State District Judge Everett Young’s recommendation that Paul Storey receive a new sentencing hearing or a reduced sentence. In an order issued in May 2018, Judge Young found prosecutors had presented false evidence and withheld evidence from the defense during Storey’s trial.

Storey was sentenced to death for the robbery and murder of Jonas Cherry in Tarrant County in 2008. A prosecutor claimed during her closing argument in the punishment phase of the trial that “... it should go without saying that all of Jonas’s family and everyone who loved him believe the death penalty is appropriate.” In fact, Judy and Glenn Cherry, the parents of Jonas, opposed the death penalty. In 2017, when Storey faced execution, they campaigned publicly to stop it.

In a 6-3 ruling, the majority of CCA judges did not consider the merits of Storey’s claim but rather ruled that Storey’s habeas counsel, who is now deceased, could have uncovered evidence to expose the falsity of the prosecutor’s closing argument sooner through “reasonable diligence” and thus could and should have brought the claim in an initial habeas filing. Two judges – Yeary and Walker – filed separate dissenting opinions; Judge Slaughter joined both dissents.

In the weeks following the CCA ruling, Storey’s attorneys asked the court to “make the extraordinary decision in this extraordinary case” to reconsider its October 2 opinions and order further briefing. A slim majority of judges refused to reconsider their ruling.

#### *Case Developments Related to Other Claims*

On July 29, 2019, the U.S. Court of Appeals for the Fifth Circuit granted a new trial to Melissa Elizabeth Lucio, finding that the state trial court had deprived Lucio of her constitutional right to present a meaningful defense by denying the right to present expert testimony to the jury. Lucio was sentenced to death in Cameron County in 2008 for killing her two-year-old daughter; she claimed the death was an accident and occurred after the toddler fell down a set of stairs.

At trial, the State relied heavily on statements Lucio had made during a long police interrogation, during which she had tried to deflect blame away from her male partner and assume guilt for her child’s condition. The defense was not allowed to put on experts to opine about Lucio’s psychology as a battered spouse and the context of her purported “confession.” According to the ruling, “Lucio tried to rebut the impact of the [police’s] interrogation by putting on an expert witness to explain why she would admit to facts that were not true. But the state trial court would not allow the expert to testify because it concluded such testimony was ‘irrelevant,’ depriving Lucio of her most compelling challenge to the statements.”<sup>17</sup> The ruling entitled Lucio to a new trial.

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<sup>17</sup> See <http://www.ca5.uscourts.gov/opinions/unpub/16/16-70027.1.pdf>.



## **Wrongful Convictions**

On March 1, 2019, the Harris County District Attorney's (DA) Office declared Alfred Dewayne Brown "actually innocent" after accepting the findings of a special prosecutor, John Raley, appointed to investigate the case. Brown was released from death row in 2015 after prosecutors dismissed the charges against him. He was convicted of the murder of Houston Police Officer Charles R. Clark at a check-cashing business in 2003. In 2014, the Texas Court of Criminal Appeals overturned his conviction due to a Brady violation, specifically, exculpatory evidence which was not turned over to Brown's defense attorneys. Since then, he has sought compensation from the State of Texas for his wrongful incarceration. Although phone records withheld by the prosecution corroborated Brown's alibi, he was not declared officially innocent at the time of his release and was deemed ineligible for compensation.

State District Judge George Powell granted the DA's motion declaring Brown "actually innocent" on May 3, 2019. In June, however, the State Comptroller once again denied Brown's application for compensation for the 12 years he spent behind bars, including a decade on death row. Brown's attorneys have filed a mandamus petition regarding the Comptroller's decision to the Texas Supreme Court, and will resume a federal lawsuit against Houston and Harris County for violating his civil rights by withholding evidence.

Brown is the 13th person exonerated and released from death row in Texas. Nationally, 166 people have been exonerated and released from death row.

## **Legislative Developments**

The 86th Texas Legislative session concluded on May 27, 2019. House Bill 246, a bill to repeal the death penalty, did not receive a committee hearing for the first time in 10 years. The bill was filed by State Representative Jessica Farrar (House District 148 – Houston), and jointly authored by State Representative Donna Howard (House District 48 – Austin) and State Representative Joe Moody (House District 78 – El Paso). The Senate version, SB 294, filed by State Senator Eddie Lucio, Jr. (Senate District 27 – Brownsville), also did not receive a committee hearing.

The Texas House of Representatives did act on several death penalty-related bills, however, and passed the following legislation with significant bipartisan support:

- House Bill 1030 would have revised and clarified the jury instructions given during the sentencing phase of a capital murder trial. The bill was sponsored by Representative Joe Moody and passed the House on April 10 by a vote of 133 Yeas to 10 Nays. It did not receive a hearing in the Senate State Affairs Committee.
- House Bill 1139 would have established a process for determining whether a defendant in a capital case is a person with an intellectual disability and prohibited the death penalty for persons found to be intellectually disabled. The bill was sponsored by State Representative Senfronia Thompson (House District 141 – Houston) and passed the House on April 30 by a vote of 102 Yeas to 37 Nays. A significantly altered version of the bill passed the Senate on May 22. Both chambers appointed members to a conference committee to resolve their differences with the bill, but they were unable to reach agreement before the session ended.

- House Bill 1936 would exempt a defendant with a severe mental illness at the time of the crime from the death penalty; the determination would be made by the jury. The bill was sponsored by State Representative Toni Rose (House District 110 – Dallas) and passed the House on May 9 by a vote of 77 Yeas to 66 Nays. The Senate did not act on the bill.

All three bills were authored and co-authored by Democrats and Republicans in the Texas House.

In July, a group of lawmakers announced the creation of a new House Criminal Justice Reform Caucus. According to State Representative Joe Moody (D-El Paso), who will lead the bipartisan group alongside State Representative Jeff Leach (R- Plano), the caucus will help educate colleagues on criminal justice issues and work together to advance reform proposals.<sup>18</sup>

### **National Developments**

On May 30, 2019 the New Hampshire Senate overrode Governor Chris Sununu’s veto of a bipartisan bill to abolish the death penalty. The House overrode the veto one week earlier by a vote of 247 to 123. New Hampshire joined 20 other states that have abandoned the death penalty through legislative or judicial action. Governors in four other states have imposed moratoria on executions, bringing the total number of states that have either ended the death penalty or have a moratorium to 25.

### **Conclusion**

Use of the death penalty continues to decline in Texas, with the number of new death sentences and executions in 2019 hovering near record-low levels. Yet as the number of Texas counties devoting resources to costly death penalty trials dwindles each year – and as prosecutors in Texas’s highest-use counties seek death sentences less often – capital punishment remains racially biased and arbitrarily applied. Flaws in death penalty cases are frequently identified on the eve of scheduled executions, highlighting the fact that the system is still unreliable and fraught with error. Individuals facing this most irrevocable punishment often have few resources to bring attention to these flaws in the underlying trials and appellate review until the eleventh hour.

TCADP urges concerned citizens and elected officials to confront the realities of this irreversible punishment and reconsider the efficacy and cost of the death penalty as a means of achieving justice, as well as the ancillary trauma the punishment causes surviving victims, prison personnel, and the families of both murder victims and perpetrators.

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<sup>18</sup> “After defeats in 2019, a group of Texas lawmakers is teaming up to push criminal justice reform,” *Texas Tribune*, July 18, 2019

**Table 1: New Death Sentences in Texas in 2019**

TDCJ Number	Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
999618	Mosley	Dameon	09/19/1981	M	Black	Unavailable	Smith	01/28/2017
999617	Acosta	Hector	06/25/1985	M	White <sup>19</sup>	Unavailable	Tarrant	01/09/2017
999616	Haskell	Ronald	08/26/1980	M	White	10/16/2019	Harris	07/09/2014
999615	Green	Gary	01/14/1963	M	White	07/03/2019	Nueces <sup>20</sup>	10/02/2013

**Table 2: Texas Executions in 2019**

Execution	Last Name	First Name	TDCJ Number	Age	Date	Race	County
567	Runnels	Travis	999505	46	12/11/2019	Black	Potter
566	Hall	Justen	999497	38	11/6/2019	White	El Paso
565	Sparks	Robert	999542	45	9/25/2019	Black	Dallas
564	Soliz	Mark	999571	37	9/10/2019	Hispanic	Johnson
563	Crutsinger	Billy	999459	64	9/4/2019	White	Tarrant
562	Swearingen	Larry	999361	48	8/21/2019	White	Montgomery
561	King	John	999295	44	4/24/2019	White	Jasper
560	Coble	Billie	976	70	2/28/2019	White	McLennan
559	Jennings	Robert	956	61	1/30/2019	Black	Harris

Source for both tables: Texas Department of Criminal Justice

<sup>19</sup> TDCJ inexplicably lists Hector Acosta's race as white instead of Hispanic.

<sup>20</sup> The trial was moved to Nueces County from Upton County, where the crime occurred and the charges originated.