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WEDNESDAY, DECEMBER 16, 2020, 12:01 AM EASTERN

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Sharp decline in Texas death penalty usage driven by COVID-19 pandemic, wave of reform-oriented prosecutors, and eroding public support

Texas and federal courts continue to confront the state's arbitrary application of capital punishment and deeply flawed practices, particularly in assessing intellectual disability evidence

Austin, Texas - The COVID-19 pandemic significantly curtailed use of the death penalty in Texas this year, resulting in a record-low number of new death sentences and the state's fewest executions since 1996, according to a new report from the Texas Coalition to Abolish the Death Penalty (TCADP).

Use of the death penalty in Texas has dropped sharply in recent years for several important reasons, including: the election of reform-oriented District Attorneys (DA) around the state; eroding public support; and frequent but uneven intervention by Texas and federal courts to address serious legal errors. Despite declining usage, serious racial disparities still exist.

Jury trials and evidentiary hearings ground to a halt in 2020 and the execution dates of eight individuals were stayed or withdrawn, due primarily to public health concerns. There was one egregious and inexplicable exception: On July 8, 2020, the State of Texas executed Billy Joe Wardlow as COVID-19-related deaths surged statewide. State and federal courts refused to intervene in his case, despite stopping all other scheduled executions since March. Wardlow was put to death for a crime he committed in 1993 when he was 18 years old.

"It is shameful that Texas was one of only two states – along with the federal government – to put anyone to death during a global pandemic," said Kristin Houlé Cuellar, TCADP Executive Director and author of *Texas Death Penalty Developments in 2020: The Year in Review*. "The fact that state legislators, juvenile justice advocates, neuroscience experts, and two jurors from Wardlow's trial had called for a reprieve based on what we know now about adolescent brain development make the circumstances of his arbitrary execution even more appalling."

Before disaster declarations were issued on March 13, 2020, the State of Texas carried out two other executions and juries sentenced two defendants to death. Since then, all other capital trials in Texas have been suspended indefinitely due to the pandemic.

The two new death sentences are the fewest recorded in Texas since 1974, when the state resumed seeking death sentences under a new capital punishment statute. Death verdicts peaked in 1999, with 48 death sentences, but have fallen to the single digits for the last six years as prosecutors find them more difficult to obtain. The DA-elect in Travis County, Jose Garza, has pledged to never seek the death penalty, while the current DAs in Bexar, Dallas, Harris, and Nueces counties have committed to limit use of capital punishment.

While the pandemic stopped most in-court proceedings, post-conviction challenges moved forward in state and federal appellate courts. Opinions issued in capital cases that raised claims of false or outdated science, prosecutorial misconduct, legal errors, and racial bias exposed persistent problems with the death penalty. In June, the U.S. Supreme Court remanded the case of Terence Andrus to the Texas Court of Criminal Appeals (CCA), breathing new life into ineffective assistance of counsel claims in death penalty cases, which frequently fail despite evidence of deficient performance by trial counsel.

The U.S. Supreme Court's decision in *Moore v. Texas* in 2017, which found that Texas courts were using outdated, non-medical criteria to assess intellectual disability claims in capital cases, continued to impact Texas's death row population. The death sentences of six individuals were reformed this year after prosecutors, district court judges, and the CCA agreed that evidence of their intellectual disability rendered them exempt from execution. On average, the six men had each spent more than 20 years on death row. Bobby Moore himself, the petitioner in *Moore v. Texas*, was granted parole and released from prison in August 2020 after 40 years of incarceration.

"These cases illustrate the futility of the death penalty," said former Texas Court of Criminal Appeals Judge Elsa Alcalá. "The State devoted an exorbitant amount of time, energy, and resources to maintaining these unconstitutional death sentences, even though evidence of intellectual disability was presented years ago."

Another individual who spent 40 years on Texas's death row, Cesar Fierro, was paroled in May 2020 after being re-sentenced to life in prison at the beginning of the year because jurors had not been given the opportunity to fully consider mitigating evidence during the punishment phase of his trial.

Over the past five years, a total of 32 individuals have been removed from Texas's death row for sentence reductions (26) or deaths in custody (6). During this same period, 39 people were executed, illustrating just how arbitrary capital punishment continues to be in the Lone Star State.

Further evidence to this point: Just three counties account for more than one-third of the new death sentence in the last five years. Disturbingly, 70% of the death sentences in this time period were imposed on people of color; 38% were imposed on Black defendants. Seventy percent of the individuals who remain on Texas's death row are Black (44.3%) or Hispanic (25.7%).

"As Texas moves away from the death penalty, what remains is an arbitrary, unfair, and racially-biased punishment," said Cuellar. "At this critical moment of reckoning with systemic racism, elected officials and the public must continue to confront our state's deeply troubling legacy of injustice reflected in the death penalty."

TCADP is a statewide grassroots advocacy organization based in Austin.

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For information on national developments, read the report from the Death Penalty Information Center: *The Death Penalty in 2020: Year End Report*. <https://bit.ly/34ecLPv>