

Texas Death Penalty Developments in 2021: The Year in Review

A Report by the Texas Coalition to Abolish the Death Penalty

Executive Summary

Use of the death penalty in Texas remained near historic low levels in 2021, with juries sentencing three people to death and the State executing three people. Unlike in 2020, however, the COVID-19 pandemic was not the primary cause of the low numbers. Instead, the State's ongoing challenges involving the assessment of intellectual disability in capital cases and concerns surrounding the free exercise of religion in the execution chamber resulted in stays or withdrawals of more than three-fourths of the executions that were scheduled.

As decades-old cases continue to wind their way through the courts, the death row population in Texas now stands at its lowest level since 1985. Two key factors accounting for the decline are the low number of new death sentences imposed in recent years and the resolution of cases involving people who have been resentenced and removed from death row based on evidence of their intellectual disability, trial errors, or other issues. Over the past five years, Texas has executed thirty-five people while thirty-one people have been resentenced or died in prison.

Death sentences have remained in the single digits for the past seven years. Just fifteen Texas counties have imposed death sentences since 2017. Of these, only three counties (Harris, Smith, and Walker) account for more than one new death sentence.

The three death sentences imposed in 2021 came from Bexar, Hunt, and Smith counties. Two of the defendants sentenced to death are Black and one is white. Even as death sentences in Texas decline, they are still applied disproportionately to people of color. Over the last five years, two-thirds of death sentences have been imposed on people of color; 40 percent were imposed on Black defendants.

Post-conviction challenges moved forward in 2021 both in district courts and in the state and federal appellate system, with uneven—often wildly disparate—outcomes. Some individuals received relief from their convictions and/or death sentences after raising claims related to prosecutorial or judicial misconduct, deficient legal representation, or innocence, while others who presented similar claims were denied.

The persistent problems with the death penalty as chronicled in this report should compel concerned citizens and elected officials in Texas to confront the realities of capital punishment and examine the efficacy and cost of executions as a means of achieving justice.

Table of Contents

Introduction1
Death Sentences1
Jury Rejections and Other Non-Death Outcomes3
Executions4
Stays of Execution and Dates Withdrawn6
Reduced Sentences and Deaths in Custody8
Updates on Intellectual Disability and Capital Cases10
Significant Post-Conviction Hearings and Rulings11
Wrongful Convictions13
Public Opinion14
Legislative Developments14
National Developments14
Conclusion15
Table 1: New Death Sentences in Texas in 202116
Table 2: Texas Executions in 202116

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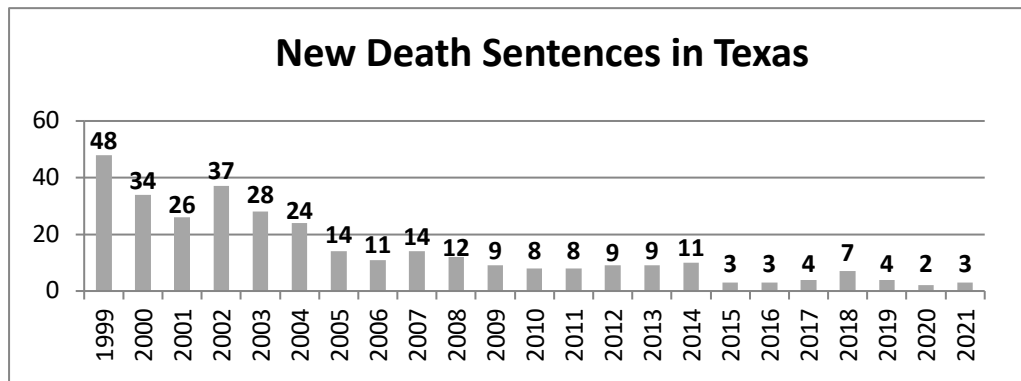
Introduction

The Texas Coalition to Abolish the Death Penalty publishes this annual report to inform the public and elected officials about issues associated with the death penalty over the past year. The report presents information on new death sentences, executions, stays of execution, reduced sentences, judicial and legislative developments, and other issues impacting the administration of justice in Texas.

Death Sentences

New Death Sentences

Death sentences have fallen from a peak of forty-eight death verdicts in 1999 to single digits for the past seven years. For the sixth consecutive year, no one was resentenced to death in Texas.



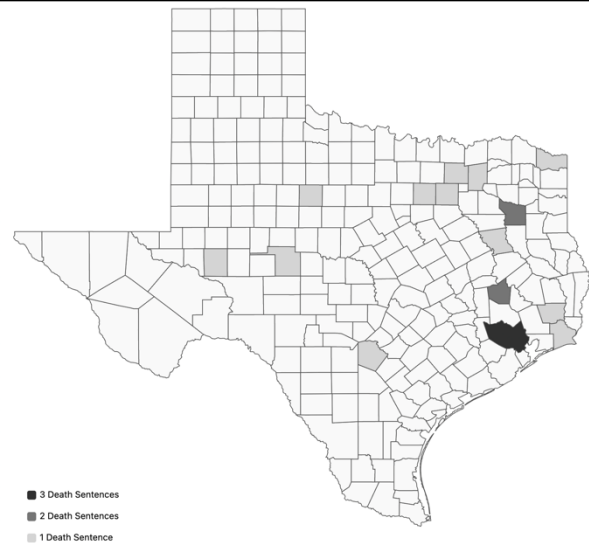
After grinding to a halt in 2020 because of the pandemic, capital jury trials involving the death penalty resumed in the second half of 2021. Juries in Texas condemned three individuals to death. Two of the defendants were brought to trial five years after being indicted.

- On August 6, 2021, after deliberating for nearly eight hours, a Bexar County jury sentenced Otis McKane to death for killing San Antonio Police Detective Benjamin Marconi in 2016. It was the first new death sentence imposed by a jury in Texas since March 2020 and the first in Bexar County in more than five years. As the proceedings concluded, other jury trials were once again placed on hold in Bexar County due to the pandemic. Although Bexar County ranks third behind Harris and Dallas counties in the total number of death sentences since 1974, use of the death penalty there has declined sharply.
- A Smith County jury sentenced William Davis to death on October 27, 2021. He was convicted of killing four patients in the ICU at the hospital where he worked in Tyler in 2018.
- On November 18, 2021, after deliberating for four hours, a jury in Hunt County sentenced Tyrone Williams to death for the murders of his ex-girlfriend, Nichole Elizabeth Gonzales, and her mother, Vicki Ann Gonzales, in 2016. It was the first new death sentence in Hunt County since 2013.

Death Sentences by County

The death penalty remains geographically isolated in Texas. The election of reform-oriented prosecutors in the last several years has both contributed to the decline of death sentencing and exacerbated this isolation. Just fifteen Texas counties have imposed death sentences in the last five years. Of these, only three counties (Harris, Smith, and Walker) account for more than one new death sentence. More than one-third of all death sentences imposed by juries in the last five years came from those three counties.

Texas Death Sentences by County, 2017-2021



| Texas Counties with More Than One Death Sentence in the Last Five Years | | | | | | | |
|---|----------|----------------|----------|----------|----------|-----------------|------------------|
| County | 2017 | 2018 | 2019 | 2020 | 2021 | Total 2017-2021 | Total Since 1974 |
| Harris | 0 | 1 ¹ | 1 | 1 | 0 | 3 | 297 |
| Smith | 0 | 0 | 1 | 0 | 1 | 2 | 26 |
| Walker | 1 | 1 | 0 | 0 | 0 | 2 | 10 |
| Total | 1 | 2 | 2 | 1 | 1 | 7 | 333 |
| All Counties | 4 | 7 | 4 | 2 | 3 | 20 | 1,115 |

Notably, Dallas County, which ranks second overall behind Harris County in historical use of the death penalty with 108 death sentences since 1974, does not appear on this list. Jurors there have imposed just one new death sentence since 2013. Tarrant County, where jurors have imposed seventy-five death sentences since 1974, also fell off the above chart for the first time since TCADP began tracking sentencing data by county in 2008.

Death Sentences by Race

As death sentences in Texas decline, they continue to be applied disproportionately to people of color. Over the last five years, two-thirds of death sentences have been imposed on people of color; 40 percent were imposed on Black defendants. In 2021, two of the defendants sentenced to death are Black and one is white.

| New Death Sentences in Texas by Race of Defendant | | | | | | |
|---|----------|----------|----------|----------|----------|-------------------------|
| Race/ethnicity | 2017 | 2018 | 2019 | 2020 | 2021 | Total Sentences by Race |
| Black | 1 | 3 | 1 | 1 | 2 | 8 |
| Hispanic | 0 | 3 | 1 | 0 | 0 | 4 |
| Asian/Other | 0 | 1 | 0 | 0 | 0 | 1 |
| Total People of Color | 1 | 7 | 2 | 1 | 2 | 13 |
| White | 3 | 0 | 2 | 1 | 1 | 7 |
| Total Sentences | 4 | 7 | 4 | 2 | 3 | 20 |

¹ Special prosecutors outside the Harris County District Attorney’s Office handled the capital murder trial of Ali Irsan in 2018.

In high-use counties, these patterns of racial bias are even more pronounced:

- Twenty of the last twenty-one defendants sentenced to death in Harris County are people of color; sixteen are Black, three are Hispanic, and one identifies as another non-white race/ethnicity. In 2019, Ronald Haskell became the first white defendant in Harris County to receive a death sentence since November 2004.
- All five men sentenced to death in Tarrant County since 2012 are Black or Hispanic.²

While the Black population of Texas comprises 11.8 percent of residents, Black individuals constitute 45.2 percent of death row inmates, according to the Texas Department of Criminal Justice (TDCJ). Hispanics comprise 25.6 percent of individuals on death row (39.3 percent of the population of Texas), and whites comprise 26.1 percent (39.8 percent of the Texas population).³

As of January 14, 2022, TDCJ lists 199 people on death row, including six women.⁴ This is the smallest Texas death row population since 1985, when there were 188 people on death row. More than one-third of these individuals were convicted in Harris County.⁵ The death row population in Texas peaked in 2000, when more than 450 individuals were awaiting execution. Texas has the third-largest death row population in the nation, after California (697) and Florida (324).

Jury Rejections and Other Non-Death Outcomes

There were no jury rejections of the death penalty in the small number of capital murder trials that took place in 2021. There were several notable cases in which prosecutors decided not to seek the death penalty, however; in at least two instances, this entailed reversing a decision by their predecessor.

Prosecutors in rural and urban counties across Texas have removed the death penalty as a sentencing option in dozens of capital murder cases in recent years, resolving many of them shortly before jury selection or the presentation of evidence was set to begin. Decisions to waive death have been due in part to the increased difficulty of securing a death verdict as well as acknowledgment of the significant long-term financial costs associated with obtaining and maintaining a death sentence.

Dallas County District Attorney (DA) John Creuzot took the death penalty off the table in two cases. He has not sought the death penalty since taking office in January 2019.

- In January, Armando Luis Juarez pled guilty to killing Dallas Police Officer Rogelio Santander outside a Home Depot store in 2018. Prosecutors removed the death penalty as a sentencing option due to evidence of Juarez's intellectual disability. The case was resolved without a trial and Juarez was sentenced to life in prison without parole.
- In June, DA Creuzot announced his office had reversed course and would not seek the death penalty for Billy Chemirmir, who is accused of robbing and killing dozens of elderly people in the Dallas area.

² TDCJ inexplicably identifies Hector Acosta's race as white instead of Hispanic.

³ See https://www.tdcj.texas.gov/death_row/dr_gender_racial_stats.html and <https://www.census.gov/quickfacts/TX>.

⁴ TDCJ's list still includes Clinton Young, whose conviction and death sentence were overturned and who has been transferred to the Midland County jail (see p. 11), and US Carnell Petetan, Jr., whose death sentence was overturned (see p. 10).

⁵ TDCJ counts 73 inmates from Harris County as of January 14, 2022.

According to the *Dallas Morning News*, Creuzot met with the families of the victims and told them the time involved in preparing for a death penalty case was too extensive and the protracted appeals process meant he would not expect to see Chemirmir executed, even if he could secure a death sentence.⁶ The capital murder case against Chemirmir proceeded to trial in November—with life in prison without parole as the only sentencing option—but the presiding judge declared a mistrial when the jury deadlocked on the issue of his guilt. A retrial in Dallas is set for April 2022; charges against Chemirmir also remain pending in Collin County. The DA there has not announced whether he will seek the death penalty.

David Conley was sentenced to life in prison without parole in Houston in October 2021 after he was convicted of killing eight people, including six children, his ex-girlfriend, Valerie Jackson, and her husband, Dwayne Jackson, in 2015. Although prosecutors initially planned to seek the death penalty, the Harris County DA’s Office dropped it after agreeing that evidence of Conley’s intellectual disability precluded it as a sentencing option.

In El Paso, a judge sentenced Jason Gibson to three consecutive life sentences in prison after he pled guilty in a deal with prosecutors to avoid the death penalty. Gibson was convicted of killing Juan Pablo Salas and his son, Jonathan Salas, during a home invasion on Thanksgiving Day in 2018. Former El Paso District Attorney Jaime Esparza, who retired at the end of 2020, had intended to seek the death penalty.

In another El Paso case, District Court Judge Alyssa Perez dismissed the capital murder charge against Ivan Gabaldon on December 14, 2021. Prosecutors initially charged Gabaldon with felony murder but admitted they were unprepared to go to trial in November. After the judge denied their request for a continuance, they then raised the charge to capital murder and announced their intention to seek the death penalty. In her ruling, Judge Perez called the DA’s abrupt decision to seek the death penalty against Gabaldon “unjustifiable” and agreed with his defense attorneys that prosecutors had shown “vindictive actions” against their client.⁷

Executions

Texas was one of just five states to carry out executions in 2021, putting three people to death and matching 2020 for the fewest executions since 1996. The Federal Government executed three people in the final days of the Trump Administration.

The State of Texas has executed 573 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.

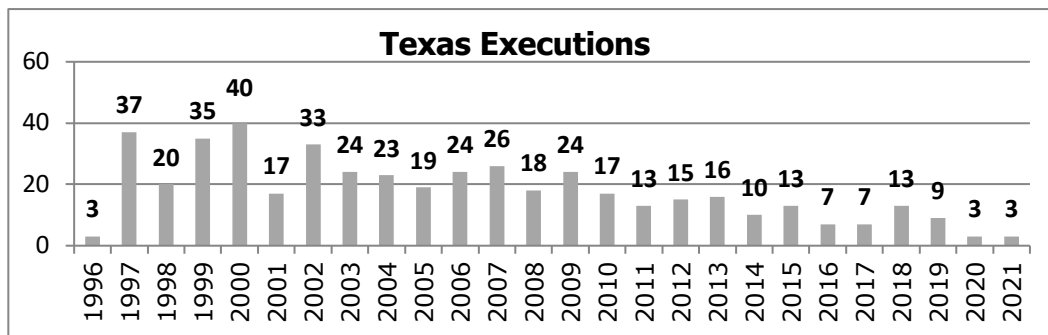
| U.S. Executions in 2021⁸ | |
|--|-----------|
| Federal | 3 |
| Texas | 3 |
| Oklahoma | 2 |
| Alabama | 1 |
| Mississippi | 1 |
| Missouri | 1 |
| Total | 11 |

⁶ “Dallas County DA tells victims’ families why he won’t seek death penalty for alleged serial killer,” *Dallas Morning News*, June 24, 2021

⁷ El Paso Judge calls DA’s Office seeking of death penalty for Juarez man an “unjustifiable penalty,” dismisses case, KTSM, December 14, 2021

⁸ It was the first execution in Oklahoma since 2015 and the first in Mississippi since 2012.

Annual executions peaked in Texas in 2000, when forty people were put to death during the final year of former Governor George W. Bush’s term.



Two of the three people put to death by Texas in 2021—Quintin Jones and John Hummel—were convicted in Tarrant County, which accounts for forty-four executions since 1982. The third person, Rick Rhoades, was convicted in Harris County, which accounts for 130 executions since 1982—more than any state except Texas. Rhoades was the first person executed from Harris County since January 2019. Collectively, the three men spent fifty-nine years on death row or an average of more than nineteen years. Jones was Black; Hummel and Rhoades were white.

The Execution of Quintin Phillippe Jones

The State of Texas executed Quintin (“Quin”) Phillippe Jones on May 19, 2021. He was the first person put to death by the State in more than 10 months.⁹ In 2001, a Tarrant County jury convicted Jones of the robbery and death of his great aunt, Berthena Bryant. Over the course of his time on death row, Jones matured and was deeply remorseful for the crime he committed as a drug-addicted and angry twenty-year-old man. Ms. Bryant’s sister, Mattie Long, and other family members forgave Jones and asked the State not to traumatize them again by executing him. The Texas Board of Pardons and Paroles ignored their pleas, however, and voted unanimously to reject clemency for Jones. His attorney then filed a complaint in federal court arguing that race appeared to have played an impermissible role in the Board’s decision to deny Jones, a Black man, a commutation of his sentence. The complaint drew parallels to the case of Thomas Whitaker, a white man who received a unanimous recommendation for clemency from the Board under similar circumstances in 2018. A federal district court dismissed the complaint and denied a motion for a stay of execution. Governor Abbott did not respond to a request for a thirty-day reprieve.

The State put Jones to death without any media witnesses present, a disturbing departure from the standard practice. A month after state legislators and First Amendment advocates called on TDCJ to account for the exclusion of media witnesses, the agency released the results of its internal investigation. It blamed the omission on a lack of training and miscommunication.

The execution of Jones was also the first to occur under TDCJ’s revised Execution Procedure. Just over two years after it removed all chaplains from the execution chamber, the Correctional Institutions Division once again changed course.¹⁰ On April 21, 2021, TDCJ published a revised Execution Procedure that allows for a TDCJ chaplain or a spiritual advisor of the individual’s choosing to be present

⁹ Texas executed Billy Joe Wardlow on July 8, 2020.

¹⁰ In April 2019, TDCJ removed all chaplains from the execution chamber in reaction to a stay of execution granted by the U.S. Supreme Court in the capital case of Patrick Murphy on grounds of religious discrimination.

in the chamber during the execution. The previous policies of first, discriminating against individuals whose faith tradition was not reflected among TDCJ’s employed chaplains, and then second, disallowing any chaplains or spiritual advisors, had led to several stays of execution since 2019. The revised Execution Procedure opened the door to more concerns later in the year, however, after it came to light that TDCJ would not allow spiritual advisors to pray aloud or offer physical comfort. This resulted in more litigation and now, a pending opinion from the U.S. Supreme Court (read more in Stays of Execution below).

The Executions of John Hummel and Rick Rhoades

On June 30, 2021, the State of Texas executed John Hummel. Ten years ago, he was convicted of killing his wife, Joy Hummel, and his father-in-law, Clyde Bedford. Hummel, who was an honorably discharged Marine, had no prior history of violence. His behavior while incarcerated undermined the jury’s determination of his “future dangerousness,” which is required to impose a death sentence in Texas. Hummel previously faced execution on March 18, 2020, but he received a stay because of the pandemic.

The State of Texas executed Rick Rhoades on September 28, 2021, after the U.S. Supreme Court declined to issue a stay. Rhoades was convicted and sentenced to death in Harris County in October 1992 for the murders of Charles and Bradley Allen. During his trial, the State elicited testimony that is now known to be false. It also may have removed two potential jurors because of their race, which is expressly prohibited by the U.S. Supreme Court’s 1986 opinion in *Batson v. Kentucky*. Attorneys filed a federal 1983 complaint arguing Rhoades had been denied his right to seek access to materials he needed to develop his *Batson* claim, including jury questionnaires and cards in the possession of the Harris County DA’s Office. These materials were necessary to conduct a thorough comparison between the people who were allowed to serve on the jury and those who were struck by the State. State and federal courts declined to compel the DA to turn over the evidence, however.

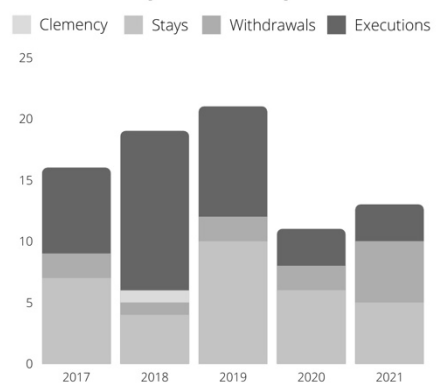
See Table 2 on page 16 for more details about the individuals put to death in 2021. The State currently has four executions scheduled in 2022 (see below for information about two of those dates).

Stays of Execution and Dates Withdrawn

More than three-fourths of the State’s thirteen scheduled executions in 2021 were halted because of intellectual disability claims or issues related to spiritual advisors in the execution chamber.¹¹ According to research by TCADP, less than half the dates set in the last five years have resulted in executions.

Of the twelve individuals given execution dates in 2021, five received stays from state or federal courts; the dates for four others were withdrawn by trial courts. At least eight people had faced previous execution dates in recent years, including five who had dates in 2020.

Outcomes of Execution Dates Set (2017-2021)



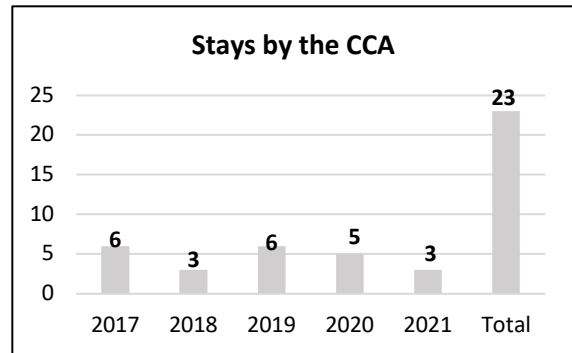
¹¹ Two execution dates were set for Ramiro Gonzales in 2021—first for April and then for November; both were withdrawn.

Tarrant County alone was responsible for four of the execution dates set in 2021. Two of those executions were carried out and the other two were stayed. The other counties that set execution dates were Cameron, Collin, El Paso, Harris, McLennan, Medina, Nueces, and Rusk.

In 2021, Texas set execution dates for five Hispanic men, four white men, two Black men, and one person with another racial identity.

Stays Granted by the Texas Court of Criminal Appeals (CCA)

For the first time since 2008, the State of Texas did not carry out any executions in the first three months of the year. All three executions scheduled for the first three months of 2021 were stayed by the CCA because of intellectual disability claims.



- Blaine Milam, who also faced execution in 2019, received another reprieve from the CCA in 2021. He was scheduled for execution on January 21, 2021 for killing 13-month-old Amora Carson in 2008 in Rusk County. Jessica Carson, the baby’s mother, was sentenced to life in prison. Both Milam and Carson were eighteen at the time of Amora’s death.
- The CCA granted a stay to Edward Busby, Jr. on February 3, 2021; he was scheduled for execution one week later. The Court sent the case back to the trial court for a review on the merits. It was the second execution date Busby had faced in two years. He was convicted of robbing and killing 77-year-old Laura Lee Crane in Fort Worth in 2004.
- Ramiro Ibarra, who was scheduled to be executed on March 4, 2021, was granted a stay by the CCA on February 24, 2021. Ibarra, who is a Mexican national, has spent twenty-three years on death row for killing sixteen-year-old Maria Zuniga in McLennan County. In addition to reviewing Ibarra’s intellectual disability claim, the trial court also will consider his claim that scientific developments related to DNA testing undermine the reliability of evidence presented at his trial.

Stays Granted by Federal Courts

Federal courts halted two executions in 2021, both on claims related to religious freedom and spiritual advisors in the execution chamber.

- Around 9:00 PM Central Time on September 8, 2021—three hours after he was scheduled to be put to death—the U.S. Supreme Court granted a stay of execution to John Ramirez. The Justices also granted his petition for certiorari. Ramirez had requested that his spiritual advisor, Pastor Dana Moore of Second Baptist Church in Corpus Christi, accompany him in the execution chamber. He also asked that Pastor Moore be allowed to lay hands upon him and pray aloud at his moment of death in accordance with his religious practice. After TDCJ denied these requests, Ramirez filed a federal complaint alleging the violation of the free exercise of his religious beliefs. On November 9, 2021, the U.S. Supreme Court heard oral argument in *Ramirez v. Collier*; a ruling in the case is pending.

It was the third time since 2019 the U.S. Supreme Court stopped an execution in Texas at the eleventh hour due to issues involving the presence of clergy in the execution chamber.¹² It was also the third time that Ramirez's execution was stopped. He was convicted in 2009 of killing and robbing Pablo Castro in Corpus Christi in 2004. Ramirez was twenty years old at the time of the offense.

- On October 7, 2021, a federal judge granted a stay of execution to Stephen Barbee based on his request for his spiritual advisor to pray aloud with him in the execution chamber. He was set to be put to death on October 12, 2021. Barbee was convicted in Tarrant County of killing Lisa and Jayden Underwood in 2005. He faced execution two years ago but was granted a stay by the CCA in response to the U.S. Supreme Court's decision in *McCoy v. Louisiana* (2018). In that opinion, the Justices ruled 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."¹³ During his trial, Barbee's lawyers unexpectedly and impermissibly conceded his guilt to the jury despite Barbee's insistence on his innocence and "not guilty" plea.

Dates Withdrawn

Trial courts withdrew the death warrants for four individuals because of the U.S. Supreme Court's decision to grant cert to John Ramirez; all four had faced previous execution dates in recent years.

- Ruben Gutierrez (convicted in Cameron County, scheduled for execution on October 27, 2021)
- Fabian Hernandez (convicted in El Paso County, scheduled for execution on November 3, 2021)
- Kosoul Chanthakoummane (convicted in Collin County, scheduled for execution on November 10, 2021)
- Ramiro Gonzales (convicted in Medina County, scheduled for execution on November 17, 2021; an earlier date set for April 2021 also was withdrawn)

Execution dates for Chanthakoummane and Gonzales have been reset for the summer of 2022.

Reduced Sentences and Deaths in Custody

In 2021, the death row population in Texas dropped by six people for reasons other than execution. Collectively, these six men spent 132 years on death row.

- Three individuals received reduced sentences and were removed from death row—two because of evidence of intellectual disability and one due to his history of severe mental illness. These cases were resolved with the agreement of the relevant District Attorney (DA) Offices.
- Three individuals died in custody; two of them had spent more than two decades on death row.

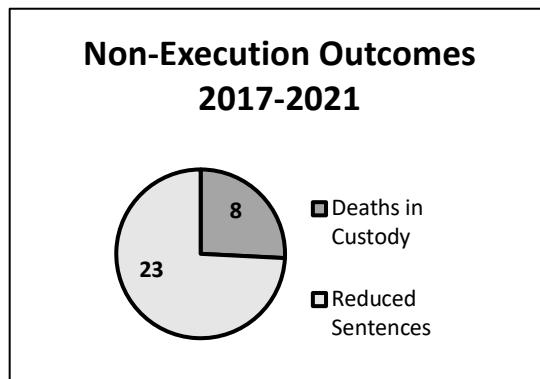
¹² In 2019, the Court granted a stay to Patrick Murphy, and in 2020, it stayed the execution of Ruben Gutierrez.

¹³ See https://www.supremecourt.gov/opinions/17pdf/16-8255_i4ek.pdf.

Over the past five years, a total of thirty-one individuals have been removed from death row in Texas due to sentence reductions (twenty-three) or deaths in custody (eight); nearly 40 percent of these cases came from Harris County.¹⁴ During this same timeframe, the State executed thirty-five people.

Reduced Sentences Due to Evidence of Intellectual Disability

Two cases involving intellectual disability claims were resolved with sentences other than the death penalty in 2021. The cases were reconsidered in light of *Moore v. Texas* (see p. 10 for details).



- In January 2021, prosecutors in Kaufman County determined that Charles Brownlow should be resentenced to life in prison without parole after agreeing with experts that he is intellectually disabled. In February 2020, the CCA overturned Brownlow’s death sentence on direct appeal. He was convicted of capital murder in 2016. During his trial, the judge instructed expert witnesses to tailor their testimony to the now-discredited “Briseño factors” for determining intellectual disability and to disregard current medical and scientific standards.
- David Lewis was removed from death row in March 2021. Under a plea agreement related to his claim of intellectual disability, his sentence was changed to life in prison. Lewis was sentenced to death in Angelina County in 1987. He was twenty-one at the time of the crime. In 2010, the CCA overturned his death sentence after determining the jury did not have the opportunity to fully consider mitigating evidence.

Reduced Sentence Due to Severe Mental Illness

Raymond Riles, a man with severe mental illness who spent the last forty-five years on death row, was resentenced to life in prison on June 9, 2021. After the CCA overturned his death sentence in April 2021, the Harris County DA decided not to pursue another death sentence based on Riles’ mental incompetency. Earlier in the year, the DA’s Office had agreed Riles should receive a new sentencing hearing. The CCA found that the jury in his 1976 trial was not given the opportunity to fully weigh the mitigating evidence of his severe mental illness. For four decades Riles languished on death row after being deemed incompetent to be executed; he was the State’s longest-serving death row inmate.

Resolution of Cases of Individuals Previously Sentenced to Death

Two other capital cases were resolved in 2021 without the death penalty. Both individuals were removed from death row several years ago and were awaiting retrials. Prosecutors resolved the case of Noah Espada through a plea agreement after opting not to seek the death penalty again. Espada was convicted in Bexar County in 2005.

Albert Turner’s 2011 conviction in Fort Bend County was overturned by the CCA in 2018. In September 2021, a jury once again convicted Turner of killing his wife and mother and sentenced him to life in prison without parole; prosecutors did not seek the death penalty in the retrial.

¹⁴ The death sentences of nine individuals convicted in Harris County have been reduced during DA Kim Ogg’s tenure since January 2017; three of these cases involved intellectual disability claims.

Deaths in Custody

Three individuals died in prison in 2021.

- David Carpenter, who was convicted in Dallas County, died in prison on June 18, 2021 after spending more than twenty-two years on death row. He was fifty-three years old.
- Jorge Villanueva died on February 6, 2021 after spending nearly twenty-five years on death row; he was sixty-six years old. Convicted in Harris County, Villanueva reportedly tested positive for COVID-19 and was battling other health issues.
- Brandon Daniel was found unresponsive in his cell on October 31, 2021. Convicted in 2014, Daniel was the last person to be sentenced to death in Travis County and spent seven years on death row; his appeals were still pending. He was just shy of his thirty-fourth birthday.

Updates on Intellectual Disability and Capital Cases

The following developments have occurred since the U.S. Supreme Court's decisions in 2017 and 2019 in *Moore v. Texas*, which required the State to change the way it assesses intellectual disability in capital cases.

- Eleven people have been resentenced and removed from death row (see pp. 8-9). On average, these men spent twenty-three years on death row.
- On May 12, 2021, the CCA vacated the death sentence of US Carnell Petetan, Jr. and remanded the case to McLennan County for a new punishment hearing. The judges found that "...although legally sufficient, the evidence was factually insufficient to support the jury's rejection of the intellectual disability special issue."¹⁵ Petetan has been on death row since 2014.
- Several other cases have been remanded to their respective trial courts for a review on the merits and are pending.
 - > The case of Steven Butler was remanded by the CCA two years ago. In September 2021, the Harris County DA's Office agreed to findings of fact that Butler is intellectually disabled. The trial court judge must now issue a recommendation and send the case back to the CCA for a final determination.
 - > The CCA remanded the case of Allen Bridgers to Smith County on June 9, 2021. Bridgers has been on death row since 1998.
- Nine executions have been stayed by state or federal courts, including three in 2021 (see p. 7).
- Current DAs have taken the death penalty off the table in at least four cases, including two in 2021 (see pp. 3-4).

As noted in the CCA's opinion in *Petetan v. Texas*, the Texas Legislature still has not established a judicial process for determining whether a defendant in a capital case is a person with an intellectual disability

¹⁵ See <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=019e6f92-52e5-4d90-87fa-7dab8e2322f5&coa=coscca&DT=OPINION&MediaID=df039cff-c8ae-49e4-a77e-ec19732be248>.

and therefore exempt from execution.¹⁶ In 2019, the House and Senate failed to reach an agreement after passing vastly different versions of legislation related to intellectual disability and capital cases. In 2021, during the Regular Session of the 87th Texas Legislature, House Bill 869 by State Representative Senfronia Thompson passed the House Criminal Jurisprudence Committee but did not advance to a floor debate. The Senate did not consider a similar bill filed by State Senator Borris Miles.

Significant Post-Conviction Hearings and Rulings

Post-conviction challenges moved forward on claims related to prosecutorial and judicial misconduct, ineffective assistance of counsel, false or outdated science, and innocence (challenges related to intellectual disability claims are noted in the above section of this report).

Cases Involving Prosecutorial and Judicial Misconduct

There were significant rulings in two cases involving egregious prosecutorial and/or judicial misconduct. In both cases, the defendants came within days of being executed before the CCA intervened.

- On September 22, 2021, the CCA overturned the conviction and death sentence of Clinton Young, who was sentenced to death in 2003. Young has maintained his innocence of the crime, which occurred when he was eighteen years old. The CCA found that Young was deprived of his right to a fair trial and an impartial judge after evidence came to light that one of the prosecutors in his 2003 trial in Midland was working at the same time for the district judge who presided over the same case. Young has been transferred to the Midland County Detention Center, where he is awaiting a new trial. In 2017, the CCA stayed his execution to consider his claim that false or misleading testimony was introduced at his trial.
- On October 11, 2021, a district court judge in Dallas determined that her predecessor, Judge Vickers Cunningham, harbored anti-Semitic views and violated Randy Halprin's right to a fair trial by not recusing himself for bias. In 2019, Halprin, who is Jewish, was less than a week away from being executed before the CCA granted a stay and ordered the trial court to consider his claim that he had been denied his right to a trial free from religious bias. In her ruling, Judge Lela L. Mays recommended that the CCA overturn the conviction and death sentence that Judge Cunningham had imposed on Halprin in 2003, calling the facts of the case "extreme by any measure."¹⁷

Cases Involving Claims of Ineffective Assistance of Counsel

In 2021, the CCA issued two starkly different rulings on cases involving claims of ineffective assistance of counsel.

- On April 14, 2021, the CCA ordered new punishment proceedings for Humberto Garza after finding that during his 2005 trial in Hidalgo County, Garza's attorney failed to investigate or present mitigating evidence that might have persuaded at least one juror to vote to spare his life. The majority opinion cited family dysfunction and exposure to trauma among other evidence that was not presented to the jury.
- On May 19, 2021, a narrow majority of judges on the CCA refused to grant a new punishment trial to Terence Tremaine Andrus. Andrus was convicted and sentenced to death in Fort Bend County in

¹⁶ Ibid.

¹⁷ See <https://drive.google.com/file/d/1xuzkjoXIF1LL1ErhQK6hgPiQsJiMgfKb/view>.

2012. In 2020, the U.S. Supreme Court ruled the trial lawyer for Andrus had performed deficiently in failing to investigate and challenge the State’s case. He also failed to investigate or present extensive mitigating evidence about his client’s background of abuse, poverty, and mental illness, evidence the Supreme Court found “compelling” and “vast.”¹⁸ The High Court remanded the case to the CCA to consider whether this deficient performance had led to “prejudice” in the jury’s imposition of a death sentence on Andrus—that is, whether there is a reasonable probability that even one juror would have opted for life rather than death if they had heard the extensive mitigating evidence that was readily available but not presented at trial.

Andrus has now returned to the Supreme Court and is asking the Justices to grant his petition for writ of certiorari, find he was denied his Sixth Amendment right to effective assistance of counsel, and grant a new punishment trial in a summary reversal—for a second time. Eight groups, including the American Bar Association, the MacArthur Justice Center, the National Alliance on Mental Illness and the National Association of Social Workers, advocates for child victims of domestic violence, and juvenile justice advocates and scholars filed briefs in support of Andrus.

Cases Involving Innocence Claims

Evidentiary hearings in cases involving innocence claims finally moved forward in 2021.

- In March 2021, Robert Roberson presented new evidence during a multi-day hearing in Anderson County. He was sentenced to death in 2003 for allegedly causing the death of Nikki Curtis, his two-year-old daughter. Roberson has maintained his innocence and seeks a new trial to present evidence that would challenge the State’s false, misleading, and scientifically invalid testimony related to “Shaken Baby Syndrome.” He faced execution in 2016 but received a stay from the CCA based in part on a state law that allows for legal challenges related to changes in the science used to obtain a conviction (Article 11.073 of the Texas Code of Criminal Procedure). The CCA sent Roberson’s case back to the trial court to consider the merits of four distinct claims, including a “junk science” claim and an actual innocence claim. An evidentiary hearing initially began in August 2018 but was halted abruptly after one day of testimony when a new district clerk found Nikki’s long-lost head CAT scans stashed in the courthouse basement. After the trial judge makes a recommendation based on the evidence presented last March, the case will go back to the CCA for an automatic review and final determination as to whether Roberson should receive a new trial.
- On November 1, 2021, retired State District Judge J.D. Langley issued his long-anticipated opinion in the case of Rodney Reed, who has maintained his innocence in the death of Stacey Stites for more than 20 years. Reed came within five days of being executed by the State of Texas in 2019. In the summer of 2021, Judge Langley presided over an evidentiary hearing in Bastrop County during which he heard hours of testimony from prominent forensic pathology experts who questioned the time of death determined by the State’s medical examiner. He also heard from witnesses who corroborated Reed’s claim that he and Stites were involved in an intimate relationship. Despite this evidence, Judge Langley declined to recommend a new trial for Reed. The CCA must decide whether to accept or reject his recommendation to deny relief to Reed.

In December 2021, attorneys for Reed filed a new appeal with the 21st Judicial District Court in Bastrop County and with the CCA alleging prosecutors in Reed’s 1998 trial illegally concealed evidence that could have exonerated him, including statements corroborating his intimate

¹⁸ See https://www.supremecourt.gov/opinions/19pdf/18-9674_2dp3.pdf.

relationship with Stites. The Application also argues the State illegally suppressed statements from neighbors about loud domestic violence arguments between Stites and her fiancé, Jimmy Fennell, a police officer who was the prime suspect in her murder for nearly a year.

In another case with an innocence claim, the U.S. Supreme Court declined to consider the cert petition of Charles Don Flores in January 2021 without addressing the merits of the issue he raised. Flores has spent more than twenty years on death row. His 1999 conviction in Dallas hinged largely on an eyewitness who identified Flores only after the police conducted a hypnosis session on her and only after she saw him sitting in the courtroom during his trial a year later. In October 2020, Flores filed a petition asking the Justices to declare the use of hypnotically induced testimony to obtain convictions unconstitutional. Two amicus briefs were filed in support, one from dozens of leading cognitive psychologists and memory experts, and one from the Innocence Project. Based on the scientific study of how memory works, a majority of U.S. jurisdictions (not including Texas) now ban the admissibility of this testimony, recognizing that the process is inherently unreliable. During the Regular Session of the 87th Texas Legislature, lawmakers passed a bill to prohibit testimony obtained following “investigative hypnosis.” Governor Greg Abbott vetoed the measure.

Cases Involving False or Misleading Scientific Evidence

In April 2021, a district court judge recommended that Tilon Carter receive a new trial due to false and misleading testimony about the victim’s cause of death by then-Tarrant County Medical Examiner, Dr. Nizam Peerwani. It is not the only case to raise questions about the Tarrant County Medical Examiner’s Office, which has been plagued by scandals. Now-discredited coroner, Dr. Marc Krouse, was fired from the office in early 2021 after an investigation revealed errors in recent autopsy reports he had filed. Dr. Peerwani retired at the end of September.

Carter has been on death row since 2006 and faced a serious execution date in 2017. After the district court’s recommendation was submitted to the CCA for a final determination, the judges asked for additional briefing about whether it should consider evidence developed for the first time in the district court hearing. The case remains pending.

Cases Involving Mental Incompetency

On direct appeal, the CCA ordered the trial court to decide whether a retrospective competency review for Demond Bluntson was possible and, if so, to conduct that review. Bluntson was sentenced to death in Webb County in 2016. In their opinion issued in June, the judges found the trial court had failed to hold the required competency hearing after defense counsel raised a motion related to Bluntson’s incompetency to stand trial. It is unclear whether Bluntson was competent at the time of trial.

Wrongful Convictions

In February 2021, the Death Penalty Information Center (DPIC) issued a *Special Report: The Innocence Epidemic*, which provides in-depth analysis regarding the facts of wrongful convictions in capital cases. With the release of this report, DPIC added eleven individuals to the list of people who spent time on death row and were later exonerated. This included three more exonerations in Texas, bringing the State’s total to sixteen death row exonerations. Nationally, there have been 186 death row exonerations.

Public Opinion

Public opinion polls conducted in Texas and nationwide in 2021 demonstrated eroding support for the death penalty. Dallas voters strongly support alternatives to the death penalty, according to a poll conducted in June 2021 by the independent research firm Public Policy Polling. When asked which punishment they prefer for people convicted of first-degree murder, 75 percent of respondents opted for a sentence of life in prison with a possibility of parole after twenty or forty years or life in prison without parole. Only 14 percent of all respondents preferred the death penalty. Even among Trump voters, support for capital punishment was notably low, with only 31 percent saying they preferred the death penalty over alternatives.

A majority of voters across all demographic categories, including political ideology, are concerned about the risk of executing innocent people: 69 percent believe it is very or somewhat likely an innocent person has been convicted and sentenced to death in Dallas. More than 80 percent of respondents would support a decision by the District Attorney to review the case of every individual still on death row from Dallas County to ensure accuracy and fairness.

Nationally, a Gallup poll released in November 2021 showed that support for the death penalty is holding at a five-decade low. Only 54 percent of American adults support the death penalty, which is the lowest measure since 1972.¹⁹

Legislative Developments

During the Regular Session of the 87th Texas Legislature, which concluded May 31, 2021, lawmakers considered a variety of bills to address serious flaws in the Texas death penalty system. These included: revising and clarifying the jury instructions provided during the sentencing phase of a capital murder trial; exempting individuals with severe mental illness at the time of the crime from the death penalty; and removing the death penalty as a punishment option for crimes charged under certain provisions of the Law of Parties. Several of these bills were listed among the House's bipartisan criminal justice reform priorities and passed that chamber with overwhelming bipartisan support; the bills did not advance in the Senate.²⁰

For the second consecutive session, abolition bills were not granted a committee hearing in either chamber. State Representative Joe Moody (House District 78-El Paso) filed House Bill 215; the bill was jointly authored by Rep. Michelle Beckley (House District 65-Carrollton) and Rep. Donna Howard (House District 48-Austin). State Senator Eddie Lucio, Jr. (Senate District 27-Brownsville) filed Senate Bill 188, with Senator Sarah Eckhardt (Senate District 14-Austin) as a co-author.

National Developments

The Commonwealth of Virginia became the twenty-third state—and the first Southern state—to abandon the death penalty through legislative or judicial action. The Virginia legislature gave final approval to a bill to repeal the death penalty on February 22, 2021, and Governor Ralph Northam signed the measure into law one month later. Although Virginia had carried out 113 executions since 1976, just two people

¹⁹ See <https://news.gallup.com/poll/268514/americans-support-life-prison-death-penalty.aspx>.

²⁰ “Phelan and Moody Introduce Smarter Justice, Safer Texas,” April 21, 2021: <https://house.texas.gov/news/press-releases/?id=7442>

remained on death row and no one had been sentenced to death since 2011. Before abolishing the death penalty, Virginia ranked second after Texas in terms of the most executions in the “modern” era and was ranked first in all-time historical executions. In another sign of the changing death penalty landscape, thirteen states have not carried out an execution in more than ten years.²¹

As a stark contrast to his predecessor, who oversaw thirteen federal executions over ten months, U.S. Attorney General Merrick Garland instituted a moratorium on federal executions shortly after his confirmation in 2021.

Conclusion

As Texas moves away from the death penalty, what remains is an arbitrary, unfair, and biased punishment that puts innocent lives at risk, disproportionately impacts Black defendants and those with intellectual disability, and refuses to recognize the humanity of those condemned by society. Individuals whose cases are rife with errors and the unequal application of the law continue to come within days of being put to death by a State more concerned about what a pastor might say in the execution chamber than the protection of constitutional rights. Given this persistent dysfunction, the current pause in executions as the U.S. Supreme Court considers the expression of religion in the execution chamber should compel Texans to conclude that it is time for the State to abandon the death penalty altogether.

²¹ See <https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions>.

Table 1: New Death Sentences in Texas in 2021

| TDCJ Number | Last Name | First Name | Date of Birth | Gender | Race | Date Received | County | Date of Offense |
|-------------|-----------|------------|---------------|--------|-------|---------------|--------|-----------------|
| 999624 | Williams | Tyrone | 03/19/1986 | M | Black | 11/22/2021 | Hunt | 06/17/2016 |
| 999623 | Davis | William | 02/03/1984 | M | White | 10/29/2021 | Smith | 08/04/2018 |
| 999622 | McKane | Otis | 11/08/1985 | M | Black | 08/18/2021 | Bexar | 11/20/2016 |

Table 2: Texas Executions in 2021

| Execution | Last Name | First Name | TDCJ Number | Age | Date | Race | County |
|-----------|-----------|------------|-------------|-----|-----------|-------|---------|
| 573 | Rhoades | Rick | 999049 | 57 | 9/28/2021 | White | Harris |
| 572 | Hummel | John | 999567 | 45 | 6/30/2021 | White | Tarrant |
| 571 | Jones | Quintin | 999379 | 41 | 5/19/2021 | Black | Tarrant |

Source: Texas Department of Criminal Justice