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Texas's death penalty a "lethal lottery" as State pursues executions in flawed cases that would not result in a death sentence today

Executions in 2022 raise troubling concerns about the fairness and utility of the death penalty as death sentences remain at historic low level

Austin, Texas - Use of the death penalty in Texas remained near historic low levels, with juries sentencing just two people to death and the State executing five people this year, according to a new report from the Texas Coalition to Abolish the Death Penalty (TCADP). Three other scheduled executions were stayed by the Texas Court of Criminal Appeals (CCA). Overall, the eight execution dates in 2022 were the fewest set in Texas since 1996.

Despite their low number, the executions set and carried out in 2022 raised troubling concerns about the fairness and utility of the death penalty. Four of the individuals put to death this year, including 78-year-old Carl Wayne Buntion, suffered from physical or mental impairments or histories of childhood trauma, while two men maintained their innocence of the crimes for which they were convicted.

Melissa Lucio, one of seven women on death row in Texas and the only Mexican-American, came perilously close to being executed despite overwhelming evidence that the death of her two-year-old daughter, Mariah, was a tragic accident—not a homicide. Two days before Lucio's scheduled execution on April 27, 2022, the CCA ordered the trial court in Cameron County to consider multiple claims related to new evidence of Lucio's innocence, which had not been presented to the jury.

As people who were sentenced to death fifteen, twenty, or even thirty years ago now face execution, the rampant flaws and failures exemplifying an era of prosecutorial excess have been on stark display. These flaws include false or misleading testimony, faulty forensic evidence, and abysmal legal representation at trial. In most cases, the jury's determination of an individual's "future dangerousness," which is required to impose a death sentence in Texas, has not stood up to scrutiny.

Texas was nearly eleven months into 2022 before a jury imposed a new death sentence. That came in Harris County, where nearly 300 people have been sentenced to death since 1974. Harris and Smith counties remain the only jurisdictions in Texas where juries have sentenced more than one person to death in the last five years.

New death sentences in Texas have dropped 96 percent since peaking in 1999, when juries sentenced forty-eight people to death. In fact, the combined death sentences imposed over the last ten years (2013 to 2022) matches the number of death sentences imposed in that single year. Prosecutors throughout the state have dropped the death penalty as a sentencing option in dozens of capital cases in recent years.

“The individuals set for execution likely would meet a different fate if they were charged today,” said Kristin Houlé Cuellar, TCADP Executive Director and author of *Texas Death Penalty Developments in 2022: The Year in Review*. “Yet because of the high hurdles that state and federal courts have erected for review and relief, these older cases from a bygone era of zealous use of the death penalty remain frozen in time, allowing their executions to proceed despite egregious constitutional violations.”

This year, the U.S. Supreme Court refused to consider the cases of two Black men in Texas who presented stark evidence of racial bias among the jurors who sentenced them to death. One of those men, Andre Thomas, is severely mentally ill and now faces execution on April 5, 2023. Thomas, who blinded himself after his arrest and conviction, suffers from paranoid schizophrenia and is deeply psychotic. The Texas Department of Criminal Justice houses him in a psychiatric facility rather than on death row and medicates him daily with strong anti-psychotic drugs.

The intransigence of the courts prompted some local prosecutors to take unusual actions in support of relief for individuals on death row this year. In the most notable example, Nueces County District Attorney Mark Gonzalez filed a motion to withdraw the execution date set for John Ramirez, which was sought without his knowledge or consent. A state district judge rejected that motion, however, and the Texas CCA refused to intervene despite Gonzalez’s request. Ramirez was executed on October 5, 2022, with his spiritual advisor by his side.

“Receiving a death sentence now amounts to a ‘lethal lottery,’ one that does nothing to deter crime or promote public safety,” said Cuellar. “The randomness of capital punishment—coupled with the egregiously flawed cases of those who remain on death row—should compel Texans to abandon the death penalty altogether.”

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TCADP is a statewide grassroots advocacy organization based in Austin. Read the full report at <https://tcadp.org/reports/>.