

Texas Death Penalty Developments in 2022: 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 2022, with juries sentencing two people to death and the State executing five people. Three other scheduled executions were stayed by the Texas Court of Criminal Appeals (CCA). Overall, the eight execution dates set for 2022 were the fewest in Texas since 1996.

Despite their low number, the executions set and carried out in 2022 raise troubling issues about the fairness and utility of the death penalty. Four of the men put to death, including 78-year-old Carl Wayne Buntion, suffered from physical or mental impairments or histories of childhood trauma, while two 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 Texas CCA ordered the trial court in Cameron County to consider multiple claims related to new evidence of Lucio’s innocence. Several jurors supported calls to halt Lucio’s execution or grant her a new trial.

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.

Over the last ten years (2013 to 2022), juries have imposed forty-eight new death sentences, matching the peak number of death sentences imposed in a single year in Texas in 1999.

While courts allowed egregious constitutional violations in Texas death penalty cases to stand this year, several prosecutors took unusual actions in support of relief for individuals on death row. In the most notable example, Nueces County District Attorney Mark Gonzalez filed a motion to withdraw the execution date set for John Ramirez, which had been sought without his knowledge or consent. A state district judge rejected that motion and the Texas CCA refused to intervene despite Gonzalez’s request to stop the execution.

Because of the high hurdles that state and federal courts have established for relief, many older cases have proceeded to execution without review. Yet the individuals set for execution likely would meet a different fate if they were charged today when prosecutors are dropping the death penalty as a sentencing option in 99 percent of capital cases. This “lethal lottery” should compel all Texans to confront the realities of capital punishment.

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Texas Death Penalty Developments in 2022: The Year in Review will be available online at <https://tcadp.org/reports/> on December 16, 2022. Contact TCADP Executive Director Kristin Houlé Cuellar at kristin@tcadp.org for more information.

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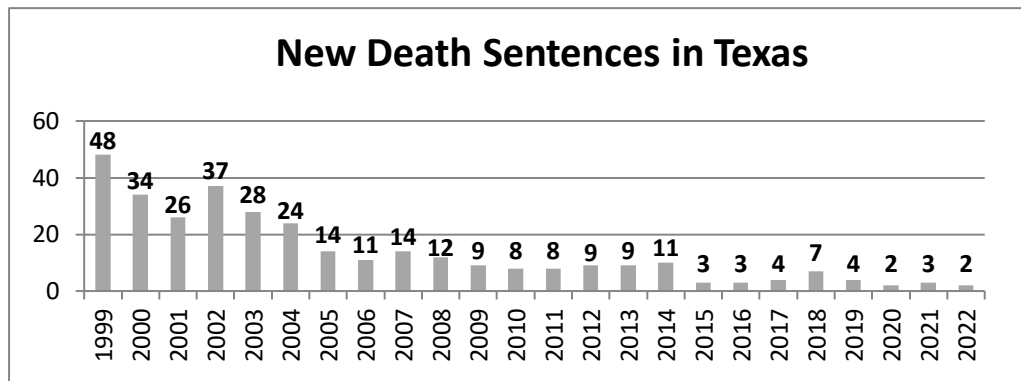
Introduction

The Texas Coalition to Abolish the Death Penalty publishes this 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, and stays of execution, reduced sentences, post-conviction rulings, 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 eight years. For the eighth consecutive year, no one was resentenced to death in Texas.



The combined number of death sentences imposed by juries over the last ten years (2013 through 2022)—a total of forty-eight—equals the peak number of people sent to death row in 1999.

After essentially grinding to a halt during the pandemic, a small number of capital jury trials involving the death penalty took place in 2022. Juries in Texas condemned two individuals—including the first woman in more than a decade—to death this year.

- On October 26, 2022, a Harris County jury imposed the first new death sentence in Texas of the year after convicting Robert Solis of killing Harris County Deputy Sandeep Dhaliwal in 2019. Solis represented himself during the trial. He did not call any witnesses during the punishment phase, and the jury deliberated for only thirty-five minutes about whether to sentence him to death. After the trial, one juror recounted to a reporter what he had told his fellow jurors: “‘Hey, we can have death row in my backyard. I’ll just do it Texas-style, oak tree, and a rope.’ We didn’t have to go through two weeks, two and a half weeks of trial.”¹

Solis is the fourth person sentenced to death in Harris County since 2018. This is more death verdicts than any other county in Texas but still a marked departure from the 1990s, when Harris County juries routinely sent more than a dozen people to death row each year.

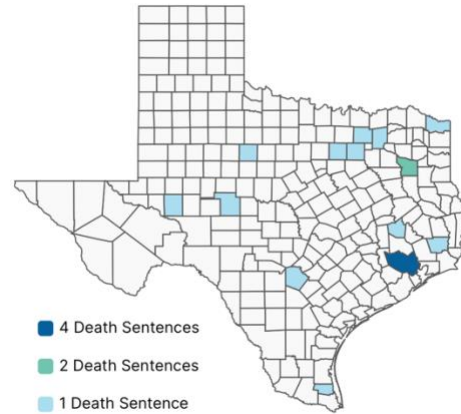
¹ “Man convicted of murdering Harris County Deputy Dhaliwal gets death sentence,” ABC13News, October 26, 2022

- On November 9, 2022, a Bowie County jury sentenced Taylor Parker to death for killing Reagan Hancock and her unborn baby, Braxlyn, in 2020. Parker is the first woman to be sentenced to death in the state since 2012 and is now the seventh woman on death row in Texas. She is the first person sentenced to death in Bowie County since 2017.

Texas Death Sentences by County, 2018-2022

Death Sentences by County

The death penalty remains geographically isolated in Texas. Juries in just fourteen counties have imposed death sentences in the last five years. Of these, only two counties—Harris and Smith—account for more than one new death sentence. One-third of all death sentences imposed by juries in the last five years came from those two counties.



Notably, in Dallas County, which ranks second behind Harris County in historical use of the death penalty with 108 death sentences since 1974, jurors have sentenced just one person to death since 2013.

In Tarrant County, where jurors have imposed seventy-five death sentences since 1974, prosecutors attempted to secure a new death sentence this year, but the jury rejected it (see Jury Rejections and Other Non-Death Outcomes below). The last death sentence imposed in Tarrant County came in 2019.

Texas Counties with More Than One Death Sentence in the Last Five Years							
County	2018	2019	2020	2021	2022	Total 2018-2022	Total Since 1974
Harris	1 ²	1	1	0	1	4	298
Smith	0	1	0	1	0	2	26
Total Harris & Smith	1	2	1	1	1	6	324
All Counties	7	4	2	3	2	18	1,117

Death Sentences by Race

As death sentences decline in Texas, they continue to be applied disproportionately to people of color. Over the last five years, more than 70 percent of death sentences have been imposed on people of color; nearly 40 percent were imposed on Black defendants. In 2022, one of the defendants sentenced to death is Hispanic and the other is white.

New Death Sentences in Texas by Race of Defendant						
Race/Ethnicity	2018	2019	2020	2021	2022	Total Sentences by Race
Black	3	1	1	2	0	7
Hispanic	3	1	0	0	1	5
Other Race/Ethnicity	1	0	0	0	0	1
Total People of Color	7	2	1	2	1	13
White	0	2	1	1	1	5
Total Sentences	7	4	2	3	2	18

² Special prosecutors outside of the Harris County District Attorney’s Office handled the capital murder trial of Ali Irsan in 2018.

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

- Twenty-one of the last twenty-two defendants sentenced to death in Harris County are people of color; sixteen are Black, four are Hispanic (including Robert Solis, sentenced to death this year), and one identifies as another non-white race/ethnicity. In 2019, Ronald Haskell was the first white defendant in Harris County to receive a death sentence since November 2004.
- The three men sentenced to death in Tarrant County since 2013 are Black or Hispanic.³ In this same ten-year period, Tarrant County prosecutors sought the death penalty in three additional cases involving Black or Hispanic defendants, but juries rejected death sentences for those individuals. Two other capital cases involving Black defendants—Reginald Kimbro and James Floyd—resulted in sentences of life without parole this year despite earlier attempts by prosecutors to secure the death penalty (see Jury Rejections and Other Non-Death Outcomes below for details).

While the Black population of Texas comprises 11.8 percent of residents, Black individuals constitute 46.4 percent of death row inmates, according to the Texas Department of Criminal Justice (TDCJ). Hispanics comprise 26.0 percent of individuals on death row (39.3 percent of the population of Texas), and whites comprise 25.0 percent (39.8 percent of the Texas population).⁴

As of December 16, 2022, TDCJ lists 192 people on death row, including seven women.⁵ 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.⁶ Texas’s death row population peaked in 2000, when more than 450 individuals were awaiting execution. Texas has the third-largest death row population in the nation, after California (674) and Florida (302).

Jury Rejections and Other Non-Death Outcomes

In the first Texas case to proceed to trial in 2022 in which prosecutors were seeking the death penalty, jurors instead opted for life in prison without parole for Timothy Huff. Huff was convicted of capital murder for their role in the death of Fort Worth Police Officer Garrett Hull in 2018. Although the man who fired the shot that killed Officer Hull died in a shootout with police, Texas law allowed for Huff to be charged with capital murder and eligible for the death penalty as a party to the offense (known as the “Law of Parties”). Following the sentencing verdict in Huff’s trial, Tarrant County prosecutors decided to drop the death penalty for another co-defendant (and non-shooter) in the case, Samuel Mayfield.⁷

Earlier in the year, Tarrant County prosecutors sought to secure a death sentence for Reginald Kimbro but on March 17, 2022, just days before his capital murder trial was set to begin, Kimbro pled guilty to the 2017 murders of Molly Matheson and Megan Getrum as well as three sexual assaults in Collin County and an aggravated sexual assault in Cameron County. In the summer of 2020, prosecutors

³ TDCJ inexplicably identifies Hector Acosta’s race as white instead of Hispanic.

⁴ See https://www.tdci.texas.gov/death_row/dr_gender_racial_stats.html and <https://www.census.gov/quickfacts/TX>.

⁵ TDCJ’s list of “Inmates on Death Row” still includes US Carnell Petetan, whose death sentence was overturned in 2019, Humberto Garza, whose death sentence was overturned in 2021, Joseph Colone, whose conviction was vacated in 2022 (see p. 13), and Shelton Jones, whose case was resolved with a plea deal in December (see pp. 9-10).

⁶ TDCJ counts 72 inmates from Harris County as of December 16, 2022.

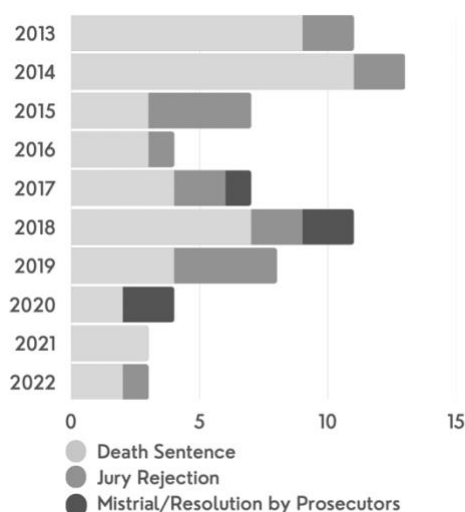
⁷ Tarrant County ranks fourth in death sentences and executions in Texas. As noted in the section above, juries rejected the death penalty in two other Tarrant County cases in the last decade.

had attempted to empanel a jury, but the judge declared a mistrial because of the pandemic. Kimbro was sentenced to life in prison without the possibility of parole.

In another Tarrant County case, James Floyd was charged with capital murder in March 2017 for breaking into the home of John and Diane Porter and killing John Porter; Diane Porter survived the attack. The State sought the death penalty, and the case was scheduled to go to trial when the pandemic hit. Jury selection finished in March 2020, but the judge declared a mistrial after determining the jury could not continue under health conditions at the time. The State dropped the death penalty shortly before Floyd's trial in 2022. Floyd represented himself, with standby counsel available. He was convicted and sentenced to life without parole.

There were two other high-profile cases in which prosecutors dropped the death penalty this year, including Marvin Guy, who has spent more than eight years awaiting trial, and Juan David Ortiz, a former U.S. Border Patrol agent recently convicted of killing four women. In both cases, prosecutors expressed a desire to accelerate the trials.

Prosecution Outcomes, 2013-2022



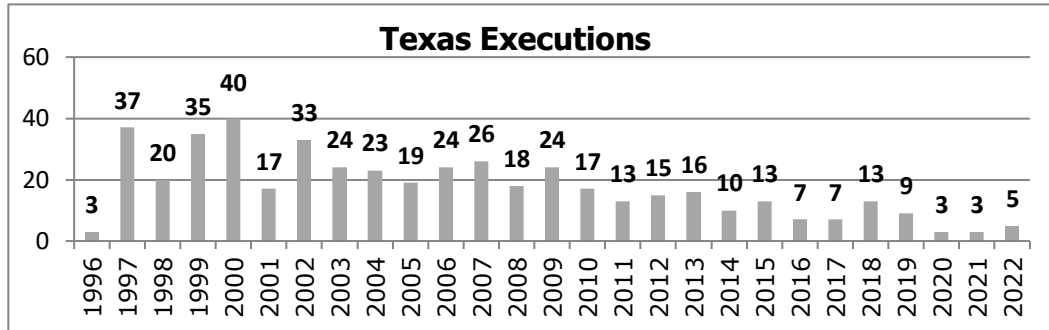
- A state district judge set a trial date for Marvin Guy for May 8, 2023, after the Bell County District Attorney’s Office decided to waive the death penalty. Guy has spent more than eight years awaiting trial. He is charged with capital murder in the death of Killeen Police Detective Charles “Chuck” Dinwiddie, who was killed during a no-knock raid conducted by law enforcement at Guy’s home in 2014. Guy maintains he fired his weapon in self-defense and did not know who was breaking into his home.
- In October, Webb County District Attorney Isidro Alaniz decided to drop the death penalty for Juan David Ortiz, whose trial was moved to Bexar County due to the high profile of the case. Ortiz is a former U.S. Border Patrol Agent charged with killing four women in 2018. Alaniz told reporters he had met with the families of all victims: “We had a discussion as to the direction of the case. They unanimously requested of me to remove the death penalty and seek life without parole.”⁸ Alaniz also noted that the trial would be shorter and less complex without the death penalty. On December 7, 2022, the jury convicted Ortiz of capital murder; he has been sentenced to life without parole.

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. See Appendix A on page 16 for additional examples of cases in which prosecutors changed their minds about seeking the death penalty.

⁸ “DA not seeking death penalty against alleged serial killer,” *Laredo Morning Times*, October 5, 2022

Executions

There was a slight uptick in executions in Texas compared with the past two years, with the state putting five people to death in 2022. Overall, the state set the fewest execution dates since 1996: eight total, with three stays.



Texas was one of just six states to carry out executions in 2022.

The five men put to death ranged in age from thirty-eight (John Ramirez) to seventy-eight (Carl Wayne Buntion, who was the oldest person put to death in Texas since the resumption of executions in 1982; he spent more than thirty-one years on death row). Not including Buntion, the four other men spent an average of more than fifteen years on death row.

The cases of those executed by Texas this year raise troubling concerns about the fairness of the death penalty system and the cruelty of lethal injections. Several of the men put to death suffered from physical or mental impairments or histories of childhood trauma, while two maintained their innocence of the crimes for which they were convicted. Four men had previous execution dates in 2020 and/or 2021.

U.S. Executions in 2022	
Texas	5
Oklahoma	5
Arizona	3
Alabama ⁹	2
Missouri	2
Mississippi	1
Total	18

- On April 21, 2022, the State of Texas carried out its first execution of the year and the first in the state in nearly seven months. Carl Wayne Buntion was put to death for killing Houston police officer Jim Irby in 1990. Nearly twenty years after his original conviction, the Texas Court of Criminal Appeals (CCA) ordered a new punishment trial after determining the jury in his 1991 trial was not able to fully consider mitigating evidence. In 2012, a second Harris County jury sentenced Buntion to death. At age seventy-eight, Buntion required specialized care, including the use of a wheelchair, to perform basic functions. His attorneys argued that he did not pose a threat to anyone, demonstrated both by his history of behavior as an inmate and his debilitating health conditions. They also asserted his execution served no legitimate purpose after he had spent more than thirty years on death row, with twenty of those years in solitary confinement.
- On August 17, 2022, the State of Texas executed Kosoul Chanthakoummane for the murder of Sarah Walker in Collin County in 2006. Joe Walker, the father of Sarah, adamantly opposed the death penalty and extended mercy to Chanthakoummane, who had also faced execution in 2021 and in

⁹ Alabama Governor Kay Ivey ordered a thorough review of the state's execution procedures after corrections officials were forced to call off the November 17, 2022 execution of Kenneth Smith because they could not start an intravenous line. It was the second time the state was unable to put an inmate to death in the past two months and the third botched execution in Alabama since 2018.

2017.¹⁰ Five years ago, the Texas CCA granted a stay and ordered the trial court to review claims of discredited science. The state court ultimately denied relief in 2020, however, agreeing with the trial court that now-discredited forensic science, including bitemark evidence and the use of hypnosis on two eyewitnesses, would not have changed the outcome of the trial. Three judges dissented from that opinion, finding Chanthakoummane’s “argument that hypnotically refreshed identification information led to unreliable identification testimony deserves further consideration.”¹¹ In a filing with the Texas CCA in the weeks before his execution, Chanthakoummane’s attorneys argued that the DNA evidence used to convict him was also questionable. The court dismissed the writ application and denied the motion to stay the execution.

- On October 5, 2022, the State executed John Ramirez, who was convicted in 2009 of killing and robbing Pablo Castro in Corpus Christi in 2004. He was twenty years old at the time of the offense. According to his clemency application, the jury that sentenced Ramirez to death never heard about his traumatic childhood and mental health issues, including an attempted suicide. It was the fourth execution date Ramirez faced in recent years and came after extensive legal wrangling about the presence and practices of spiritual advisors in the execution chamber. In September 2021, the U.S. Supreme Court stayed Ramirez’s execution to consider his federal complaint alleging the violation of the free exercise of his religious beliefs. Ramirez had requested that his spiritual advisor, Pastor Dana Moore of Second Baptist Church in Corpus Christi, be allowed to lay hands upon him in the execution chamber and pray aloud at his moment of death in accordance with his religious practice. The Texas Department of Criminal Justice (TDCJ) denied those requests.

The Justices heard oral arguments in the case on November 9, 2021. In the Court’s opinion in *Ramirez v. Collier*, released on March 24, 2022, it upheld the religious rights of individuals facing execution in Texas. In compliance with that decision, TDCJ now is considering requests involving spiritual advisors on a case-by-case basis, and it allowed Pastor Moore to pray aloud and touch Ramirez during his execution.

Ramirez’s last execution date was sought without the knowledge or consent of Nueces County District Attorney (DA) Mark Gonzalez, who publicly expressed his belief that the death penalty is unethical. DA Gonzalez filed a motion to withdraw the date, but a state district judge rejected that motion and the Texas CCA refused to intervene despite Gonzalez’s request to stop the execution.

- On November 9, 2022, the State of Texas executed Tracy Beatty. He was convicted of killing his mother, Carolyn Click, in Smith County in 2003. Beatty faced execution in March 2020 but received a stay from the Texas CCA because of the health crisis created by COVID-19. He also had an execution date in 2015. Leading up to his scheduled execution this year, Beatty sought a stay from the U.S. Supreme Court. His request referenced a mental health crisis he experienced earlier in the year, which led his attorney to schedule evaluations by mental health experts. According to the motion, at some point last year, TDCJ began requiring a court order to have handcuffs removed during mental health evaluations. Previously, death row prisoners’ handcuffs were removed as a matter of course during these evaluations without a court order. Because TDCJ refused to remove Beatty’s handcuffs (and opposed the issuance of a court order), the experts were only able to complete limited,

¹⁰ See <https://www.facebook.com/KnightsofColumbus/videos/witness-to-mercy-a-fathers-forgiveness/10155257174915476/>.

¹¹ See <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=128c7524-31aa-4f43-8466-d7e1b6656ef2&coa=coscca&DT=OTHER&MediaID=dad8e381-14f0-4db3-a455-47fb4a34b61c>.

preliminary evaluations. His attorney argued that this interference rendered Beatty unable to present available information in support of clemency. The Court declined to consider the petition.

- On November 16, 2022, the State of Texas executed Stephen Barbee despite the violation of his constitutional right to a fair trial that occurred when his lawyers unexpectedly and impermissibly conceded his guilt to the jury despite Barbee’s insistence on his innocence of the murders of Lisa and Jayden Underwood in 2005. In 2018, in *McCoy v. Louisiana*, the U.S. Supreme Court held that it is structural error for counsel to take away a defendant’s right to maintain his innocence, even if counsel does so “strategically” to try to avoid a death sentence. Yet Barbee was unable to secure relief under this recently recognized constitutional right. Not only did Barbee’s trial counsel concede his guilt without his consent, but they also failed to take any reasonable steps to establish his innocence or to present compelling mitigating evidence to the jury, particularly regarding the crucial special issue of “future dangerousness,” which a Texas jury is required to determine to impose a death sentence. Barbee did not have a criminal record prior to his arrest in 2005 and did not commit a single act of violence during his incarceration on death row.

The execution took longer than usual because of Barbee’s physical disabilities, a concern that was raised in a legal challenge by his attorney but dismissed. Barbee’s physical health had deteriorated to the point that he primarily relied on a wheelchair and was unable to attend to basic hygiene needs. He had persistent, well-documented arm immobility and range-of-motion disabilities. According to prison spokesperson Amanda Hernandez, “Due to his inability to extend his arms, it took longer to ensure he had functional IV lines.”¹² Barbee was convicted and sentenced to death in Tarrant County. It was the third execution date he faced since 2019.

The State of Texas has executed 578 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. Annual executions peaked in Texas in 2000, when forty people were put to death during the last year of former Governor George W. Bush’s term.

Executions by Race

Of the five men put to death in 2022, three were white, one was Hispanic, and one was of Southeast Asian descent. Since 1982, the State of Texas has executed 258 individuals who were white, 206 who were Black, 110 who were Hispanic, and four who had another racial identity.

Executions by County

In 2022, no county was responsible for more than one execution. The jurisdictions accounting for executions this year were Collin, Harris, Nueces, Smith, and Tarrant counties. Harris County alone accounts for 131 executions, more than any state except Texas.

**Outcome of Execution Dates Set
2018-2022**



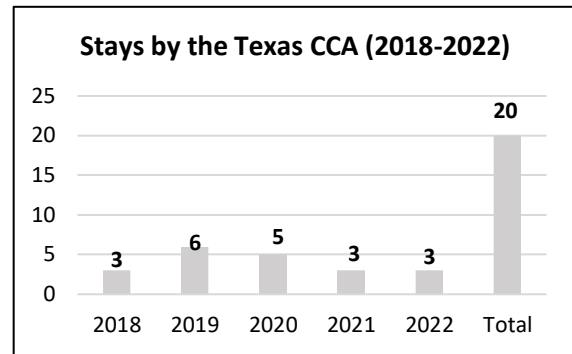
See Table 2 on page 15 for more details about the individuals put to death in 2022. The State currently has eight executions scheduled in 2023. Four of the individuals with execution dates next year were convicted in the 1990s. Two of the cases come from Harris County.

¹² “Texas’ execution of Stephen Barbee was prolonged while officials searched for a vein,” *Texas Tribune*, November 16, 2022

Stays of Execution

Of the eight people scheduled for execution in 2022, three received stays from the Texas Court of Criminal Appeals (CCA).

- On March 3, 2022, the Texas CCA granted a stay of execution to Michael Gonzales, who was scheduled to be put to death on March 8, 2022. He was convicted of killing his neighbors, Merced Aguirre and Manuel Aguirre, in Ector County in 1995. Gonzales’s attorneys raised four claims in their habeas petition and motion for a stay of execution: evidence of intellectual disability; false testimony elicited by the State; hidden evidence that the lead detective in the case had a long history of misconduct and other evidence that undercut its case in violation of Gonzales’s right to a fair trial; and actual innocence. The court granted the stay based on Gonzales’s claims of intellectual disability and the withholding of evidence. His attorneys claim newly discovered evidence provided by the Odessa Police Department could prove his innocence. It is the tenth time since 2017 an execution in Texas has been stayed by a federal or state court due to a claim of intellectual disability.



- On April 25, 2022, just two days before her scheduled execution, the Texas CCA granted a stay to Melissa Lucio. Lucio, one of seven women on death row in Texas and the only Mexican-American, was convicted and sentenced to death in Cameron County in 2008 for causing the death of her two-year-old daughter, Mariah. There is compelling evidence that Mariah’s death was a tragic accident resulting from a head injury she suffered in a fall—not a homicide. Although Lucio repeatedly told the police she did not kill her daughter, they continued to interrogate her for five hours until she agreed, falsely, to take responsibility for some of her daughter’s injuries. Lucio suffered a lifetime of sexual abuse and domestic violence, which made her especially vulnerable to the police’s coercive interrogation tactics. She had no history of violence. Lucio’s application for clemency received support from a bipartisan group of more than 100 state legislators, Baptist and Catholic faith leaders, groups that advocate against domestic violence and sexual assault, exonerees, and Latino organizations.

The Texas CCA ordered the trial court in Cameron County to consider multiple claims related to new evidence of Lucio’s innocence, which the jury did not hear. This includes new scientific and expert evidence showing that her conviction was based on an unreliable, coerced “confession” and unscientific false evidence that misled the jury. Several jurors supported calls to halt Lucio’s execution or grant her a new trial.

- The CCA granted a stay to Ramiro Gonzales, who was scheduled to be executed on July 13, 2022, and remanded a claim about false testimony by the State’s trial expert regarding recidivism rates. Gonzales was sentenced to death in Medina County for the murder of Bridget Townsend, an offense he committed when he was just 18 years old. At the time, Gonzales was gripped by a serious drug addiction rooted in prenatal substance exposure and childhood trauma, abuse, and neglect. Much of this mitigation evidence was not presented to the jury by his court-appointed attorneys, who failed to provide any context for his impulsive behavior and acts of violence.

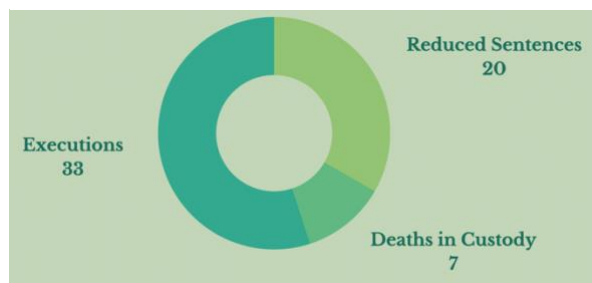
The mental health expert who testified for the prosecution at trial that Gonzales would present a future danger—even if incarcerated—re-evaluated him after fifteen years on death row and now concludes Gonzales “does not pose a risk of future danger to society,” a determination that is required for a jury to impose a death sentence in Texas.

Reduced Sentences and Deaths in Custody

In 2022, Texas’s death row population decreased by four people for reasons other than execution. Collectively, these four men spent ninety-one years on death row.

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

**Executions vs. Removals from Death Row
2018-2022**



Reduced Sentences

Three men received reduced sentences this year. In May, the Texas Court of Criminal Appeals granted relief to two men and reduced their sentences to life in prison due to evidence of their intellectual disability.

- Steven Butler was convicted in Harris County in 1988 and spent more than thirty-three years on death row for the robbery and murder of Velma Clemons. He first raised a claim related to his intellectual disability in 2004 but was denied relief. Butler raised his claim again in 2019. He is now sixty years old.
- Juan Segundo, who faced execution in October 2018, was convicted in 2006 of the rape and murder of eleven-year-old Vanessa Villa in 1986 in Tarrant County.

Thirteen men have been resentenced in the wake of the U.S. Supreme Court’s decisions in *Moore v. Texas* in 2017 and 2019, which required Texas to change the way it assesses intellectual disability in capital cases (in 2002, the Court prohibited the death penalty for persons with intellectual disability in the case of *Atkins v. Virginia*). Most of these individuals spent decades on death row.

In the third case, on December 7, 2022, the Harris County District Attorney’s (DA) Office announced that Shelton Jones, who has been on death row since 1992, has been resentenced to life in prison after reaching a plea deal. Jones was convicted of killing Houston Police Sergeant Bruno Soboleski in 1991. Years ago, a federal district court determined Jones was entitled to a new sentencing hearing under the 1989 U.S. Supreme Court ruling, *Penry v. Lynaugh*, which involved the Texas case of John Paul Penry. In *Penry*, the Court found jurors must have an opportunity to fully consider and give effect to mitigating evidence during the punishment phase of death penalty trials. The decision resulted in new punishment trials for dozens of individuals on death row, returning almost twenty cases to Harris County alone.¹³ Many of these cases have been resolved with sentences other than the death penalty.

¹³ “New jury returns Harris County man to death row for 1987 slaying,” *Houston Chronicle*, November 21, 2014

The DA's Office planned to seek another death sentence for Jones after his case returned to Harris County for a retrial in 2019, but it recently determined that "so much time has passed that it makes re-trying the case extremely difficult and risky." According to its statement on the case, more than twelve witnesses have died or been declared incompetent since the 1991 trial.¹⁴ Only eleven people still on death row have been there longer than Jones. As part of the plea deal, he waived the right to seek any further relief.¹⁵

Death in Custody

Donald Bess died of a heart attack on September 1, 2022, after spending nearly twelve years on death row for killing college student Angela Samota in 1984. DNA matched Bess to the murder in 2008. During his trial in Dallas in 2010, he experienced a heart attack while managing other health issues such as diabetes, morbid obesity, and heart disease. Bess was seventy-four years old.

Significant Post-Conviction Hearings and Rulings

This year, state and federal courts held hearings or issued rulings on a wide range of post-conviction challenges, including prosecutorial and judicial misconduct, racial bias, ineffective assistance of counsel, innocence, the use of forensic evidence, and competency to be executed.

Cases Involving Prosecutorial or Judicial Misconduct

There were significant developments in two cases involving prosecutorial or judicial misconduct; in both cases, the Tarrant County District Attorney's (DA) Office filed motions in support of relief for the defendants.

- Randy Halprin, a Jewish man on death row, faced execution in 2019 but was granted a stay by the Texas Court of Criminal Appeals (CCA) based on evidence his trial was tainted by the anti-Semitic bias of Judge Vickers Cunningham. The State—as represented by the Tarrant County DA's Office—now agrees Halprin is entitled to relief "...on the ground that Applicant's trial judge harbored actual bias against him at the time of trial." In 2021, Judge Lela L. Mays recommended that the Texas CCA overturn the conviction and death sentence imposed by Judge Cunningham on Halprin in 2003, calling the facts of the case "extreme by any measure."¹⁶ The Texas CCA did not act on the recommendation but rather ordered Judge Mays to conduct a live hearing, which took place in August 2022. Shortly thereafter, the Tarrant County DA's Office filed its Post-Hearing Proposed Memorandum, Findings of Fact, and Conclusions of Law in support of relief for Halprin. On December 13, 2022, Judge Mays once again concluded that Halprin did not receive a fair trial and recommended relief. The Texas CCA now will make a final determination on whether to overturn Halprin's conviction and death sentence and order a new trial.
- In August, Tarrant County DA Sharen Wilson filed a motion (called a "suggestion") with the Texas CCA asking for a new punishment trial for Paul David Storey, who has been on death row since 2008 for the robbery and murder of Jonas Cherry. Storey faced execution in April 2017. A prosecutor claimed during her closing argument in the punishment phase of his trial that "... it should go without saying that all of Jonas's family and everyone who loved him believe the death penalty is

¹⁴ See <https://app.dao.hctx.net/da-kim-ogg-issues-statement-case-against-shelton-jones-1991-capital-murder-hpd-sgt-bruno-soboleski>

¹⁵ Jones does not yet appear on TDCJ's list of "Inmates No Longer on Death Row."

¹⁶ See <https://drive.google.com/file/d/1xuzkjoXIF1LL1ErhQK6hgPiQsjIMgfKb/view>.

appropriate.” In fact, Judy and Glenn Cherry, the parents of Jonas, opposed the death penalty and campaigned publicly to stop Storey’s execution.

After the Texas CCA granted a stay of execution to Storey, State District Judge Everett Young held an evidentiary hearing to determine whether prosecutors had committed misconduct during the trial. In 2018, Judge Young recommended that Storey’s death sentence be commuted to life in prison after finding prosecutors had presented false evidence and withheld evidence from the defense. He also found that the testimony of the two original prosecutors at the writ hearing was not credible. A slim majority of judges on the Texas CCA rejected Judge Young’s recommendation in 2019, however. They 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 filed separate dissenting opinions; both were joined by a third judge.

DA Wilson has asked the Texas CCA to reconsider its 2019 ruling that denied relief to Storey, noting that the prosecutors’ conduct “is the very antithesis of due process.”¹⁷ Her motion came after the U.S. Supreme Court declined to consider Storey’s petition for certiorari in which he asked the Court to accept his case and review the judgment of the U.S. Court of Appeals for the Fifth Circuit to procedurally bar his claim of prosecutorial misconduct. Justice Sonia Sotomayor provided a statement in support of Storey, in which she noted that “the State... ran out the clock by failing to disclose its malfeasance throughout Storey’s initial post-conviction proceedings.”¹⁸

Cases Involving Racial Bias

The U.S. Supreme Court declined 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.

- On April 18, 2022, the Justices declined to consider the case of *Kristopher Love v. Texas*. A juror was seated for Love’s 2018 trial in Dallas County despite responding to a questionnaire that he believed statistics showed nonwhites were more violent than whites. Per Texas’s unique sentencing guidelines, jurors must determine whether the defendant poses a continuing threat to society to impose a death sentence. The trial judge denied the defense’s attempt to strike the juror for cause. Justice Sonia Sotomayor was joined by Justices Elena Kagan and Stephen Breyer in her dissent from the Court’s decision not to review Love’s case, writing, “Whatever the nature of the bias, if a trial court seats a juror who harbors a disqualifying prejudice, the resulting judgment must be reversed.”¹⁹
- In October, the U.S. Supreme Court declined to consider the case of Andre Thomas, a man with severe mental illness who was convicted in Grayson County in 2005 of murdering his estranged wife, a white woman, their son, and her daughter in response to voices in his head. Suffering from paranoid schizophrenia and active psychosis, Thomas committed the crime and then attempted to take his own life by stabbing himself in the chest. Five days after the murders, while sitting in his jail cell, Thomas—following the literal dictates of Matthew 5:29 that “if thy right eye offend thee, pluck

¹⁷ See <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=022c2dd5-d70b-499a-96b8-ea8b111dd8fb&coa=coscca&DT=MOTION&MediaID=2799972f-107d-4639-a7da-87e2e66b2514>.

¹⁸ See https://www.supremecourt.gov/opinions/21pdf/21-6674_6468.pdf.

¹⁹ See https://www.supremecourt.gov/opinions/21pdf/21-5050_3dq3.pdf.

it out, and cast it from thee”—gouged out his right eye. Soon after arriving on death row, Thomas gouged out his other eye and ate it.

Several people who expressed prejudice against interracial marriage were allowed to serve on the all-white jury that sentenced Thomas to death. Thomas asked the Supreme Court to hold that this violated his rights to an impartial jury and effective assistance of counsel. Justice Sotomayor, joined by Justices Kagan and Katanji Brown Jackson, dissented from the Court’s decision not to review the case, arguing “No jury deciding whether to recommend a death sentence should be tainted by potential racial biases that could infect its deliberation or decision, particularly where the case involved an interracial crime.” The State has set an execution date of April 5, 2023 for Thomas.

Cases Involving Ineffective Assistance of Counsel

On June 13, 2022, the U.S. Supreme Court denied Terence Andrus’s petition for certiorari and summary reversal over a vigorous dissent by Justice Sotomayor, joined by Justices Breyer and Kagan. Andrus was sentenced to death in Fort Bend County in 2012 after receiving abysmal legal representation at trial. In her dissent, Justice Sotomayor wrote that “Andrus’ case cries out for intervention...” and observed that “if summary reversal is ever warranted, it is warranted here.”²⁰

Andrus v. Texas raised important questions regarding the rule of law. Two years ago, the Supreme Court found that Andrus’s trial lawyer had failed to investigate or present extensive mitigating evidence about Andrus’s background of abuse, poverty, and mental illness. The Justices sent the case back to the Texas CCA to consider whether this deficient performance had caused “prejudice”—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 evidence that was readily available but not presented at trial. Instead of following the Justices’ directive, the Texas CCA sharply criticized the High Court’s decision and explicitly rejected its finding of trial counsel’s ineffectiveness.

After the Texas CCA’s surprising rejection of the High Court’s directives, Andrus again sought relief from the U.S. Supreme Court. The second time, however, the Court refused to take up the appeal, thus leaving unaddressed the destabilizing effect the state court decision had on the rule of law. It also declined to correct the state court’s judgment, which hinged on harmful and unfounded stereotypes about childhood trauma and mental illness and misconstructions of the record—all points noted by Justice Sotomayor in a 25-page dissent.

Cases Involving Innocence Claims

Closing arguments in the state habeas proceedings for Robert Roberson took place in Palestine, Texas on January 31, 2022. Roberson was convicted and sentenced to death in Anderson County in 2003 for the death of his two-year-old daughter, Nikki. He has consistently maintained his innocence. Roberson’s evidentiary hearing focused on four claims, including an actual innocence claim and the use of false, misleading, and scientifically invalid testimony.

On February 14, 2022, Judge Deborah Evans issued findings in which she recommended denying relief for Roberson and adopted the State’s proposed findings, which did not discuss any of the new evidence related to the actual cause of Nikki’s death. The case has returned to the Texas CCA for a final determination. The Center for Integrity in Forensic Sciences, a non-profit dedicated to reforming forensic science, crime laboratories, and the use of quasi-science in courtrooms, filed an amicus

²⁰ See https://www.supremecourt.gov/opinions/21pdf/21-6001_3d9g.pdf.

brief with the Texas CCA in support of Roberson, as did a group of exonerees who were wrongly convicted under the same discredited “Shaken Baby Syndrome” hypothesis the State asserted during Roberson’s trial.

Cases Involving Forensic Evidence

There were developments in three cases involving the use of forensic evidence:

- On March 2, 2022, the Texas CCA overturned the conviction of Joseph Colone, who was sentenced to death in Jefferson County in 2017 for allegedly killing Mary Goodman and her 16-year-old daughter, Briana Goodman, in 2010. Colone has consistently maintained his innocence. The court found that the State suppressed material evidence showing the DPS Crime Laboratory had mishandled evidence prior to DNA testing, violating Colone’s right to due process, and that a witness for the State had provided false testimony. The case has been remanded to Jefferson County, where a judge has started the process to set a “reasonable bond” that could allow for Colone’s release while he awaits a new trial. The State is not seeking another death sentence for Colone.²¹
- On October 11, 2022, the U.S. Supreme Court heard oral argument in *Reed v. Goertz*. Rodney Reed, who has been on death row in Texas since 1998 for a crime he has steadfastly maintained he did not commit, seeks DNA testing of crime-scene evidence, including the belt used to strangle the victim, Stacey Stites. That belt, along with other key crime-scene evidence, has never been tested. The question under consideration by the Court is when the statute of limitations starts running on a due process claim relating to a state’s DNA-testing procedures.
- In October, the Travis County District Attorney’s (DA) Office filed a brief in support of Areli Escobar’s petition for certiorari with the U.S. Supreme Court. DA José Garza, who also supported Escobar’s request for a new trial when the case was before the Texas CCA, believes Escobar’s conviction for killing Bianca Maldonado Hernandez in 2011 is based on flawed DNA evidence. In 2016, an audit by the Texas Forensic Science Commission raised troubling questions about how the Austin Police Department’s crime lab was handling and analyzing DNA evidence. This led to the shutdown of the lab, and it has cast doubt on convictions like Escobar’s. A state district judge also recommended relief for Escobar, but the Texas CCA refused to grant it. The question before the Supreme Court is whether the state court erred in holding that the prosecution’s reliance on admittedly false DNA evidence to secure the conviction and death sentence is consistent with the federal Due Process clause.

Cases Involving Competency to be Executed

In late October, Federal District Court Judge Robert Pitman presided over a three-day hearing to determine whether Scott Panetti, who has been diagnosed with schizophrenia and paranoid delusions over many decades, is competent to be executed. This is not the first time such a hearing has taken place in his case. As Panetti’s attorney noted in his opening statement, “It is unprecedented to be litigating on an execution competency claim for 20 years now.”²²

²¹ Colone still appears on TDCJ’s list of “Inmates on Death Row,” even though he has been sent back to Jefferson County to await a new trial and does not face the prospect of another death sentence.

²² “Texas tries again to prove that Scott Panetti is just sane enough to be executed,” *Texas Tribune*, October 28, 2022

Panetti has been on death row since 1995 after he was allowed to represent himself during his Kerr County trial while dressed in a purple cowboy costume. He has a forty-year documented history of severe mental illness, which includes profound distortions in his perception of reality, disorganized thinking and speech, paranoid and grandiose delusions, and audio hallucinations. In Panetti's own case, *Panetti v. Quarterman* (2007), the U.S. Supreme Court heightened the Eighth Amendment's protection of persons who are mentally ill by requiring that they have a rational understanding of the connection between their crime and their execution. Judge Pitman's determination is pending. Panetti does not have an execution date.

New Voices

Fifty-six elected prosecutors from twenty-six different states, including three District Attorneys (DA) in Texas, have pledged to work to effectively end the death penalty. Texas DAs John Creuzot of Dallas County, José Garza of Travis County, and Mark Gonzalez of Nueces County endorsed a letter released on February 17, 2022 by Fair and Just Prosecution in which they expressed concerns about racial bias, use of the death penalty against individuals with diminished capacity, and wrongful execution.

The letter reads, in part:

We are duty-bound to counter these egregious injustices and we pledge to use our power as prosecutors, whenever and however it may be appropriate, to do so. For those of us in states where the death penalty is still permitted, we will uphold Supreme Court precedent and the interests of justice by refusing to seek the death penalty against people with intellectual disabilities, post-traumatic stress disorder, histories of traumatic brain injury, or other intellectual or cognitive challenges that diminish their ability to fully understand and regulate their own actions...This is the bare minimum that justice demands of us.²³

Conclusion

As the number of Texas counties devoting resources to costly death penalty trials dwindles each year – and as prosecutors across the state drop the death penalty in case after case—capital punishment remains a “lethal lottery.” Individuals who are set for execution were convicted years ago during an era of prosecutorial excess, putting the rampant flaws and failures in their cases on stark display. State and federal courts have allowed egregious constitutional violations to stand without review, and many death penalty cases remain frozen in time until the eleventh hour. The persistent problems with the death penalty exemplified by the cases chronicled in this report—and the inherent arbitrariness of its application—should compel concerned citizens and elected officials in Texas to confront the efficacy and fairness of executions as a means of achieving justice.

²³ See <https://fairandjustprosecution.org/wp-content/uploads/2022/02/FJP-Death-Penalty-Joint-Statement-2022.pdf>.

Table 1: New Death Sentences in Texas in 2022

TDCJ Number	Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
999626	Parker	Taylor	12/08/1992	F	White	11/09/2022	Bowie	10/09/2020
999625	Solis	Robert	08/27/1972	M	Hispanic	10/27/2022	Harris	09/27/2019

Table 2: Texas Executions in 2022

Execution	Last Name	First Name	TDCJ Number	Age	Date	Race	County
578	Barbee	Stephen	999507	55	11/16/2022	White	Tarrant
577	Beatty	Tracy	999484	61	11/9/2022	White	Smith
576	Ramirez	John	999544	38	10/5/2022	Hispanic	Nueces
575	Chanthakoummane	Kosol	999529	41	8/17/2022	Other	Collin
574	Buntion	Carl	993	78	4/21/2022	White	Harris

Source for both: Texas Department of Criminal Justice

Appendix A: Additional Examples of Non-Death Outcomes in 2022

- Manuel Williams and his wife were charged with capital murder for beating their three-year-old daughter to death in July 2020. Smith County originally sought the death penalty for Williams, who is Black, but not for his wife, who is white. Ultimately, Williams pled guilty to a charge of injury to a child with intention to cause serious bodily injury and in February 2022, he was sentenced to fifty years in prison.
- On March 10, 2022, a Freestone County jury found Dabrett Black guilty of capital murder for killing DPS Trooper Damon Allen on Thanksgiving Day in 2017. The death penalty was taken off the table in exchange for Black's waiver of the insanity defense. Black's attorneys highlighted his mental health issues at trial, stating he had acted out of self-defense after feeling threatened by Trooper Allen, who had pulled him over for speeding. Black is a veteran who served three tours of duty in Iraq. He reportedly suffers from PTSD, a traumatic brain injury, and schizophrenia, all of which the defense claimed impacted his behavior. Black will serve a sentence of life in prison without parole.
- Samuel Lopez was twenty years old when he was charged with capital murder for killing his ex-girlfriend and three others, including a two-year-old, in Webb County in April 2020. The State sought the death penalty, but in May 2022, Lopez was sentenced to life without parole in exchange for a guilty plea to the capital murder charge.
- On July 25, 2022, Jose Baldomero Flores, III pled guilty to the murders of Heather Wilms in 2005 and Esmeralda Herrera in 2011. Both murder cases remained cold until 2015, when the Texas Ranger Unsolved Crimes Investigation Program identified unknown DNA from Wilms's body. The COVID-19 pandemic slowed the pace of court proceedings, but on the eve of jury selection—and facing a possible death sentence—Flores accepted a plea deal. Nearly two decades after the murders, he was sentenced to three separate life sentences (two for murder and one for arson).
- Sampson Oguntope, a former Texas Tech student, was arrested for killing an 89-year-old woman in 2012, and the State sought the death penalty. He was found incompetent to stand trial in 2013 and was not found competent again until August 2022. Shortly thereafter, he pled guilty in exchange for a sentence of life without parole.
- Jonathon Menard was indicted by a Jefferson County grand jury in 2021 on charges of capital murder and tampering with physical evidence in connection with the murder of Kayla Rice, his pregnant girlfriend. Prosecutor Phillip Smith explained why the State recently waived the death penalty: "We looked at everything in the case, we spoke to the family, and we felt proving future dangerousness would have been a very difficult task based on the amount of criminal history that he has got and just came to the decision that it was the best thing to do for all parties."²⁴
- Dwayne Chadwick was charged with capital murder in Tom Green County for killing two people and setting their house on fire in March 2019, and the State originally sought the death penalty. In September 2022, Chadwick agreed to plead guilty to two counts of murder with his punishment to be determined by the judge, who sentenced him to forty-five years in prison.

²⁴ "Capital murder trial expected for Beaumont man accused of killing pregnant girlfriend," *Beaumont Enterprise*, October 6, 2022