

Texas Death Penalty Developments in 2023: The Year in Review

A Report by the Texas Coalition to Abolish the Death Penalty

Executive Summary

Texas remained an outlier as just one of five states to carry out executions in 2023. Of the thirteen execution dates set in 2023, eight people were put to death, three dates were withdrawn, one man received a last-minute stay of execution, and one man died from a medical condition.

Death sentences remained in the single digits for the ninth consecutive year, with juries sending three new people to death row. In two other trials, jurors rejected the death penalty after determining there was sufficient mitigating evidence to warrant a sentence of life in prison without parole instead. Since 2019, juries have rejected the death penalty in one-third of the capital murder cases that have proceeded to trial with death as a potential outcome.

Six of the eight men put to death this year had significant intellectual or mental health impairments, including intellectual disability, Fetal Alcohol Spectrum Disorder, brain damage, suicidal ideation, clinical depression, and other mental health diagnoses. In many cases, these impairments were exacerbated by years of neglect and abuse.

Collectively, the eight men executed in 2023 spent an average of more than twenty-two years on death row. Their trials, many of which took place decades ago, were plagued by egregious flaws, and their post-conviction appeals raised troubling concerns about the fairness of the death penalty system. Most of the issues raised in those appeals were never addressed by any court.

Receiving a death sentence or being executed continues to amount to a “lethal lottery.” In the last five years, individuals on death row in Texas were more likely to have their sentences reduced or die in custody than they were to be executed by the State. The sentences of fourteen individuals have been reduced since 2019 due to evidence of intellectual disability alone.

Texas’s death row population decreased by six people for reasons other than execution in 2023. Among those removed from death row was Syed Rabbani, who was resentenced to life in prison after spending thirty-five years under an unconstitutional death sentence.

The death penalty remains geographically isolated within Texas. More than half of the thirteen scheduled execution dates came from just three counties: Dallas (three); Harris (two); and Bowie (2). Juries in just eleven counties have imposed new death sentences since 2019.

Capital punishment also continues to be imposed disproportionately on people of color. Juries imposed two of the three new death sentences on people of color, and five of the eight people put to death were Black, Hispanic, or Native American.

The persistent problems with the death penalty—and Texas’s outlier status—should compel concerned citizens and elected officials to confront the realities of capital punishment and examine the efficacy and cost of executions as a means of achieving justice.

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Texas Death Penalty Developments in 2023: The Year in Review is available online at <https://tcadp.org/reports/>. Contact TCADP Executive Director Kristin Houlé Cuellar at kristin@tcadp.org for more information.

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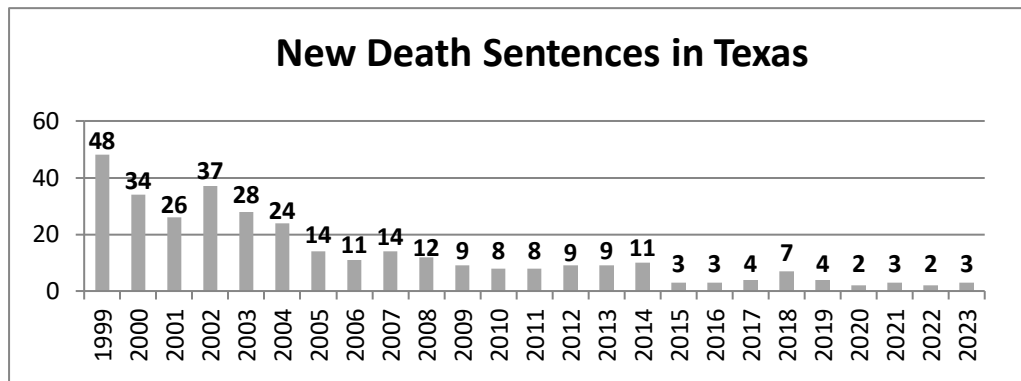
Introduction

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 death sentences and scheduled executions, 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 nine years.



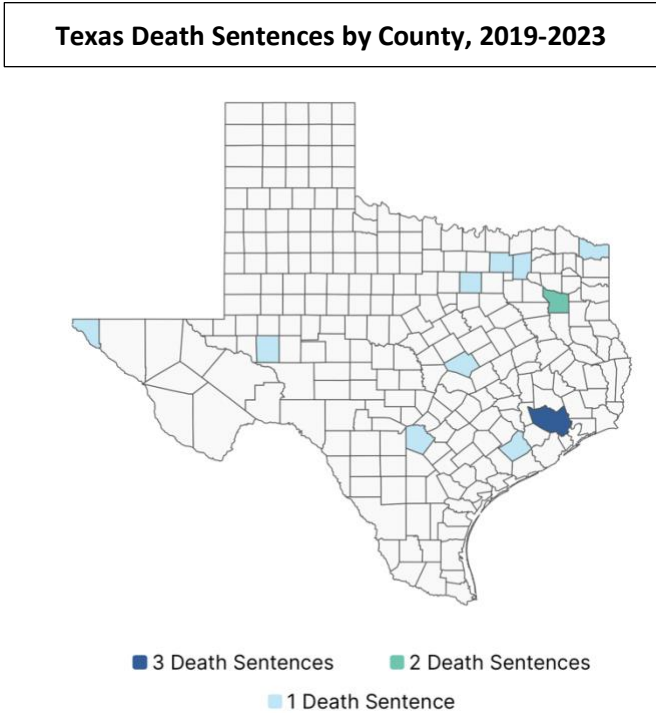
Juries in Texas sent three new individuals to death row in 2023. In two of those cases, the defendants were allowed to represent themselves for all or part of their trials.

- On February 2, 2023, a Wharton County jury sentenced **Robert Allen Satterfield** to death for the murder of Ray Shawn (“baby Ray”) Hudson, Jr., a four-year-old child. The jury deliberated about the punishment for only one hour. Satterfield represented himself during the final days of the trial and did not call any witnesses during the punishment phase. He also was charged with killing Ray Shawn Hudson, Sr. and Maya Rivera, the parents of the child.
- A Bell County jury convicted **Cedric Marks** of capital murder after nearly six weeks of testimony, during which Marks represented himself after repeated requests for substitute counsel were denied and despite questions regarding his competency. He was convicted of killing Jenna Scott and Michael Swearingin in 2019. The jury sentenced him to death on June 9, 2023, after Marks took the stand and asked for the death penalty if jurors really believed he was guilty. It was the first death sentence imposed by a jury in Bell County since 2007.
- On August 9, 2023, after deliberating for nearly ten hours, a jury sentenced **Facundo Chavez** to death for the murder of El Paso County Sheriff Deputy Peter Herrera in 2019. It is the first death sentence in El Paso County since 2014.

New Death Sentences by County

The death penalty remains geographically isolated within Texas. Juries in just eleven counties have imposed death sentences in the last five years. Of these, juries in only two counties—Harris and Smith—have imposed more than one new death sentence in this period. More than one-third of all death sentences imposed by juries in the last five years came from those two counties. No death sentences were imposed in new cases in Harris or Smith counties this year, however.

Notably, there were no death sentences in new cases in any of the top four sentencing counties in Texas in 2023 (Harris, Bexar, Dallas, Tarrant).¹



Texas Counties with More Than One Death Sentence in the Last Five Years							
County	2019	2020	2021	2022	2023	Total 2019-2023	Total People Sentenced to Death Since 1974
Harris	1	1	0	1	0	3	298
Smith	1	0	1	0	0	2	26
Total Harris & Smith	2	1	1	1	0	5	324
All Counties	4	2	3	2	3	14	1,120

New 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 50 percent of death sentences have been imposed on people of color; nearly 40 percent were imposed on Black defendants. In 2023, one of the new defendants sentenced to death is Hispanic and one is Black.²

New Death Sentences in Texas by Race of Defendant						
Race/Ethnicity	2019	2020	2021	2022	2023	Total Sentences by Race
Black	1	1	2	0	1	5
Hispanic	1	0	0	1	1	3
Other Race/Ethnicity	0	0	0	0	0	0
Total People of Color	2	1	2	1	2	8
White	2	1	1	1	1	6
Total Sentences	4	2	3	2	3	14

¹ A Harris County jury did impose another death sentence on Daryl Wheatfall in a new punishment trial; he has been on death row since 1992. See page 3 for details.

² We follow the Texas Department of Criminal Justice (TDCJ) in using the term Hispanic in this report.

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, 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 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.

Resentenced to Death

Eight years ago, the Texas Court of Criminal Appeals (CCA) overturned the death sentence of **Daryl Wheatfall**, who was convicted in 1992 for a robbery and murder in Houston. The Texas CCA determined Wheatfall was entitled to a new punishment hearing under *Penry v. Lynaugh* (1989), which involved the Texas death penalty case of John Paul Penry. In *Penry*, the U.S. Supreme 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 Justices concluded that Texas's capital sentencing scheme at the time did not provide sufficient means for jurors to do so.

The *Penry* decision resulted in new punishment trials for dozens of individuals on death row, returning almost twenty cases to Harris County alone.⁴ Although in recent years prosecutors have waived death in most of the cases that were remanded, the Harris County District Attorney's (DA) Office pursued another death verdict for Wheatfall during a new punishment trial that took place in the fall of 2023. After deliberating for three days, on November 15, 2023, the jury imposed another death sentence on Wheatfall. It was the first time since 2015 that a Texas jury has imposed another death sentence in a new punishment trial in a capital case.

Texas's Current Death Row Population

While the Black population of Texas comprises 11.8 percent of residents, Black individuals constitute 45.6 percent of death row inmates, according to the Texas Department of Criminal Justice (TDCJ). Hispanics comprise 27.8 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).⁵

As of December 12, 2023, TDCJ lists 180 people on death row, including seven women.⁶ 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.⁷ 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 (652) and Florida (287).

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

⁴ "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014.

⁵ See https://www.tdcj.texas.gov/death_row/dr_gender_racial_stats.html and <https://www.census.gov/quickfacts/TX>.

⁶ TDCJ's list of "Inmates on Death Row" still includes Steven Long, who was resentenced to life in prison this year and is no longer incarcerated on death row, and Humberto Garza, whose death sentence was overturned in 2021.

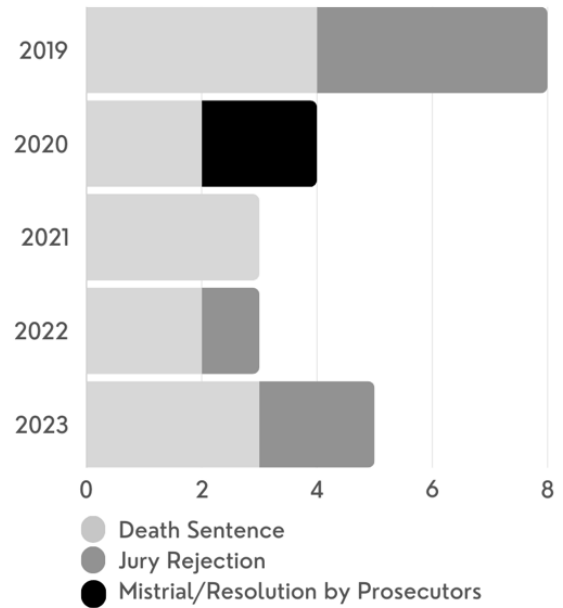
⁷ TDCJ counts sixty-seven inmates from Harris County as of December 12, 2023.

Jury Rejections and Other Non-Death Outcomes

Since 2019, juries have rejected the death penalty in one-third of the capital murder cases that have proceeded to trial with death as a potential verdict.⁸ Out of the five new cases in which prosecutors pursued the death penalty in 2023, two trials resulted in sentences of life in prison without parole after jurors were persuaded by the mitigating evidence presented by defense teams.

- On February 24, 2023, after three days of deliberations, a Lubbock County jury handed down a sentence of life in prison without parole for **Hollis Daniels** for killing Floyd East Jr., a Texas Tech University Police Officer, in 2017. Daniels was eighteen years old at the time of the crime. He pleaded guilty to all charges. After hearing evidence that the shooting took place while Daniels was experiencing a drug-fueled mental health crisis, jurors determined there were mitigating circumstances to spare him from the death penalty.
- On July 18, 2023, a Webb County jury returned its verdict in the case of **Ronald Burgos-Aviles**, a former U.S. Border Patrol Agent convicted of killing Grizelda Hernandez, with whom he allegedly had an affair, and their one-year-old son, Dominic Alexander, in 2018. Jurors determined there was sufficient mitigating evidence to warrant a sentence of life in prison without parole instead of the death penalty.

PROSECUTION OUTCOMES SINCE 2019



There were several high-profile cases in which prosecutors dropped the death penalty in 2023, including for **Billy Chemirmir**, who was accused of killing nearly two dozen elderly people in Collin and Dallas counties over a two-year span from 2016 to 2018. The Dallas County DA had waived the death penalty for two of those murders, and in 2022, Chemirmir was convicted and sentenced to life in prison without parole. In August 2023, the DA for Collin County announced his office would not seek the death penalty for Chemirmir for the killings in his jurisdiction. The Dallas County convictions were part of the reason the Collin County DA decided to waive the death penalty. Chemirmir was killed by his cellmate at the Coffield Unit on September 19, 2023.

In McLennan County, prosecutors abandoned efforts to secure another death sentence for **US Carnell Petetan, Jr.** (see Reduced Sentences below for details), and in the case of **Christopher Weiss**, the death penalty was dropped as a punishment option for charges that have been pending since 2017. Weiss is charged with the shooting deaths of Valarie Martinez, with whom he allegedly was having an affair, and her one-year-old daughter, Azariah. The McLennan County DA's office initially sought death but recused

⁸ Two Tarrant County cases were declared mistrials in 2020 because of the pandemic (both cases were resolved by prosecutors in 2022 with sentences of life without parole). Twenty-one capital cases in which prosecutors sought the death penalty have proceeded to trials since 2019; seven of those resulted in sentences of life in prison without the possibility of parole.

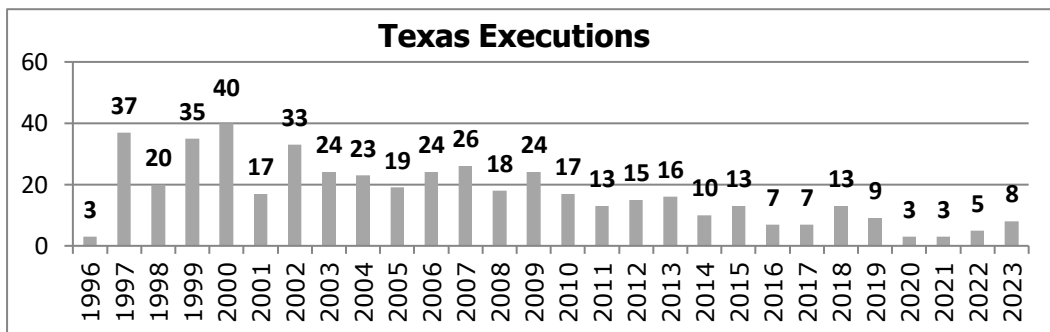
itself after a new administration came in because of a conflict of interest: the new first assistant DA had helped finalize Weiss's divorce after he was arrested. The case was then moved to the Dallas County DA's office, which ultimately waived the death penalty. The case is now set for trial in the spring of 2024 on the question of Weiss's guilt.

In another noteworthy case, on May 16, 2023, a Cameron County jury acquitted **Yordi Barthelemy** of the shooting deaths of three women on South Padre Island in 2021. The Cameron County DA's Office initially issued an intent to seek the death penalty against Barthelemy, but later waived it. Barthelemy reportedly claimed he acted in self-defense.

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. Decisions to waive death have been due in part to the increased difficulty of securing a death verdict as well as an acknowledgment of the significant long-term financial costs and strain on victims' families associated with obtaining and maintaining a death sentence.

Executions

Executions in 2023 reflected pre-pandemic numbers, with the state putting eight people to death. Texas was one of just five states to carry out executions in 2023. The executions were crammed into the first and last quarters of the year, with a six-month break in between. Two men were executed two days apart in March.



The eight men put to death by Texas this year spent an average of more than twenty-two years on death row. Their trials, many of which took place decades ago, were plagued by egregious flaws—including racial bias, junk science, confusing jury instructions, and inflammatory testimony—and their post-conviction appeals raised troubling concerns about the fairness of the death penalty system. Most of the issues raised in those appeals were never addressed by any court. Three men maintained their innocence of the crimes for which they were convicted and executed.

Six of the eight men who were executed had significant intellectual or mental health impairments, including intellectual disability, Fetal Alcohol Spectrum Disorder, brain damage, suicidal ideation, clinical depression, and other mental health diagnoses. In many cases, these impairments were exacerbated by years of neglect and abuse during their childhoods.

As a result of grossly inadequate legal representation, jurors in most of these trials did not learn about these impairments or the traumatic life stories of the men they sentenced to death. After hearing

compelling mitigating evidence from the present-day legal teams for those facing execution, jurors in several cases said they would have changed their verdict or at least supported a stay of execution for further review.

- On January 10, 2023, the State of Texas executed **Robert Fratta** after “a dramatic day of back-and-forth court decisions on whether the state could continue using lethal drugs long past their original expiration dates.”⁹ (See Lethal Injection Issues below for more details.) Fratta, a former Missouri City police officer, was convicted twice by Harris County juries of hiring two men to kill his wife, Farah, in 1994.¹⁰ He always maintained his innocence. Fratta’s attorneys raised concerns that the State obtained his conviction and death sentence through unreliable and unconstitutional tactics. The Texas CCA denied his application for writ of habeas corpus, however.

U.S. Executions in 2023	
Texas	8
Florida	6
Missouri	4
Oklahoma	4
Alabama	2
Total	24

- On February 1, 2023, the State executed **Wesley Ruiz**, who was convicted of shooting and killing Dallas police officer Mark Nix in 2007 after a car chase that ensued when Officer Nix attempted to stop Ruiz in his vehicle. The Dallas County jurors who sentenced Ruiz to death in 2008 did not hear any information about the horrific life circumstances he endured as a child, which included severe neglect and abandonment by both parents, physical, psychological, and emotional abuse, homelessness, and impairments from Fetal Alcohol Spectrum Disorder, PTSD, complex trauma, and brain damage. Nor did they hear about his experiences with bad actors in the police department, who constantly surveilled and harassed him.

There also was evidence some jurors harbored racially biased views of Hispanic men, which impacted their deliberations. After hearing about Ruiz’s life circumstances from his appellate lawyers, several of those jurors said they would have given more weight towards sentencing Ruiz to life in prison without parole instead of the death penalty. Even the foreman of the jury, who used stereotypical, racist language to describe Ruiz, supported commutation of Ruiz’s death sentence. Ruiz expressed deep remorse for his crime and worked to better himself during his fourteen years on death row.

- On February 8, 2023, the State executed **John Balentine** after the Texas CCA and the U.S. Supreme Court refused to provide a substantive judicial review of evidence of racial bias among the all-white jurors who sentenced him to death more than two decades ago. Balentine, a Black man, was convicted of killing three white teenagers—Mark Caylor, Kai Brooke Geyer, and Steven Brady Watson—in Amarillo (Potter County) in 1998 after a dispute with one of the victims. He received abysmal representation from his trial attorneys, who harbored racial animus towards Balentine and did virtually nothing to gather information about his childhood and background. Consequently, the jury did not hear about Balentine’s history as the victim of sexual and physical abuse, his childhood experiences of abject poverty, neglect, and domestic violence, or his history of learning impairments and life-long brain damage. In signed statements gathered since the trial in 1999, several jurors indicated they had wanted to hear this evidence of mitigation; at least two jurors felt it would have changed their vote from a death sentence to life in prison. There also was evidence, including

⁹ “Texas executes Robert Fratta after high courts reject challenges to expired lethal injection drugs,” *Texas Tribune*, January 10, 2023

¹⁰ Both of those men, Howard Guidry and Joseph Prystash, remain on death row.

declarations from jurors and others, showing that the jury foreperson harbored longstanding and virulent racist views towards Black people.

- On March 7, 2023, the State put **Gary Green** to death for killing his estranged wife, Lovetta Armstead, and her daughter, Jazzmen, in 2009 in Dallas. Evidence established that his cognitive and mental health challenges diminished his ability to fully understand and regulate his actions. Green was born into a family that was plagued by violence, neglect, instability, and mental illness. Experts testified at his trial that he likely suffered from schizoaffective disorder of the bipolar type, and he had a lifelong history of paranoid thinking and behavior. A month before the murders, Green had sought help at Timberlawn psychiatric hospital in Dallas, where he was incorrectly diagnosed and discharged after four days. He was unable to continue antipsychotic medication that was prescribed because of cost. Green's attorney sought to withdraw the execution date, arguing he needed more time to pursue additional intellectual disability testing and allow for the resolution of a pending civil lawsuit related to the use of expired drugs in executions in Texas, but those requests were summarily denied.
- On March 9, 2023, Texas executed **Arthur Brown** despite significant evidence of his innocence, long concealed by prosecutorial misconduct, and intellectual disability. Brown served nearly thirty years on death row after being convicted of killing four people in Harris County in 1992 during what police called a drug purchase. His conviction was based on flawed forensic evidence and eyewitness testimony obtained through faulty police techniques. His attorneys had recently uncovered evidence—previously suppressed by the Harris County DA's office—showing that other men, not Brown, committed the murders. In addition, Brown's jury did not learn about his childhood, which was rife with abject poverty, physical and emotional abuse, and violence, or his intellectual impairments and symptoms of Fetal Alcohol Spectrum Disorder. The Texas CCA denied Brown's motion for a stay of execution without considering the merits of his claims. A state district judge declined to withdraw the execution date to allow for new DNA testing that could have proved Brown's innocence.
- Late in the night of October 10, 2023, the State of Texas executed **Jedidiah Murphy** after the U.S. Supreme Court denied his final appeal. Earlier in the evening, the Court had vacated a stay of execution that was granted by a federal judge and upheld by the U.S. Fifth Circuit Court of Appeals related to Murphy's request for DNA testing relevant to another crime that was introduced at his trial. The jury that sentenced Murphy to death heard highly inflammatory testimony from the victim of a violent crime who identified him as the assailant three years after the fact. Murphy maintained he did not commit that crime, which was adjudicated, and evidence discovered by appellate attorneys undermined the victim's identification of Murphy, while forensic evidence, including fingerprints, supported his claim of innocence in that case. Previous requests for DNA testing to prove his innocence in this other case had also been denied.

Murphy was convicted of kidnapping and killing Bertie Cunningham in Dallas in 2001 while in the throes of a mental health crisis brought on by years of abandonment, neglect, and abuse by his parents and the various foster care institutions through which he cycled. He accepted responsibility for his crime and expressed profound remorse for the irreplaceable loss and pain his actions caused. The other victim's testimony about Murphy during the punishment phase of his trial in the Cunningham case was pivotal to the State's argument he constituted a "future danger" and weighed heavily on the jury's deliberations, however. In the two decades he spent on death row, Murphy

experienced a genuine spiritual and personal transformation grounded in his Jewish faith. His execution took place on World Day Against the Death Penalty.

- On November 9, 2023, the State executed **Brent Brewer** even though one of his jurors had not wanted to vote for a death sentence and the State’s now-discredited expert gave bogus testimony. Brewer was nineteen at the time of the crime and spent his entire adult life in prison. The robbery and murder of Robert Laminack in Amarillo in 1990 occurred just weeks after Brewer left a state mental hospital, where he had been involuntarily committed for depression and suicidal thoughts. Like so many on death row, Brewer’s childhood was marked by neglect and trauma caused by repeated exposure to domestic violence.

Over the thirty-two years he spent on death row, Brewer did not commit a single act of violence against another person. His exemplary disciplinary record stood in direct contrast to the testimony provided during his trial—and again during a resentencing trial in 2009—by the State’s expert, Dr. Richard Coons, who the Texas CCA has since found reached conclusions ungrounded in any reliable methodology. Dr. Coons, who never spoke or met with Brewer, did not cite any evidence to support his conclusion that Brewer would likely commit acts of violence in the future. This “future dangerousness” determination is required for a jury to impose a death sentence in Texas.

One of the jurors did not want to sentence Brewer to death, but Texas’s confusing and misleading jury instructions led her to believe her single vote could not change the verdict. After the trial, this juror wrote to Brewer and apologized for the verdict. The two developed a friendship, and she urged the Texas Board of Pardons and Paroles to spare his life, to no avail.

- On November 16, 2023, Texas carried out its last execution of the year, putting **David Renteria** to death for a crime he maintained he did not commit. Renteria was convicted and sentenced to death in El Paso County for the 2001 murder of five-year-old Alexandra Flores. According to Renteria, members of the Barrio Azteca gang, a notorious cross-border prison gang and drug cartel, threatened and coerced him into leading Alexandra out of a Walmart and into their car. He was deeply remorseful for the coerced role he played in Alexandra’s murder and haunted by what he witnessed that day.

The State of Texas has executed 586 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 thirteen individuals scheduled for execution in Texas in 2023, more than half were people of color. In total, three white men, three Black men, one Hispanic man, and one Native American were put to death in 2023. Since 1982, the State of Texas has executed 261 individuals who were white, 209 who were Black, 111 who were Hispanic, and five who had another racial identity.

Of the 586 executions carried out by the State of Texas since 1982, 114 involved Black people convicted of killing white victims. Only six have involved white people convicted of killing Black victims.

Executions by County

This year, seven of the thirteen scheduled execution dates came from just three counties: Dallas (three); Harris (two); and Bowie (two). Of the people who were put to death, three were convicted in Dallas County, two were convicted in Harris County, two were from the Panhandle (Potter and Randall counties), and one was from El Paso County.

Harris County alone accounts for 133 executions, more than any state except Texas itself. Dallas County accounts for 65 executions.

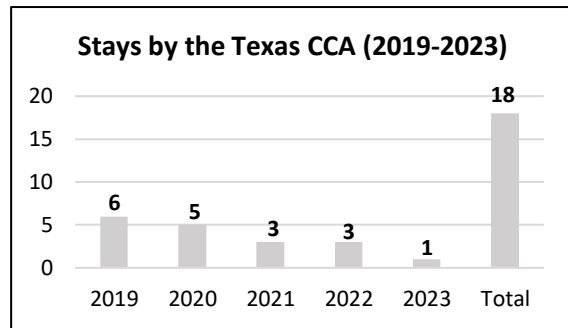
See Table 2 on page 17 for more details about the individuals put to death in 2023.

Stays of Execution and Dates Withdrawn

Stay of Execution

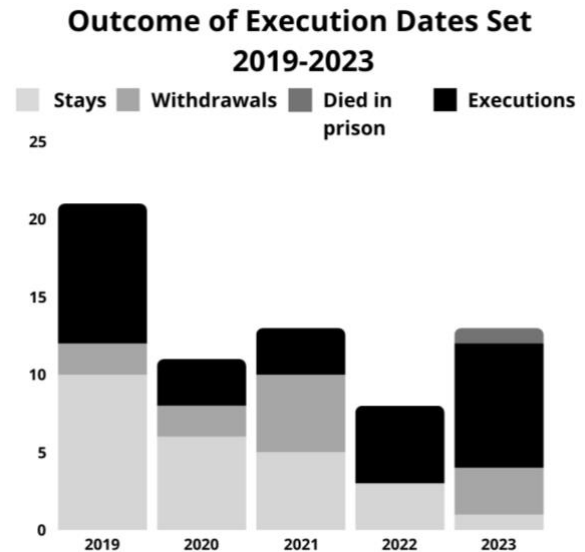
Of the thirteen people scheduled for execution in 2023, just one received a stay this year.

The Texas CCA granted a stay to **Will Speer** five hours before he was set to be put to death on October 26, 2023, pending its review of several claims related to his trial. Speer raised five issues in his appeal, alleging his counsel had been ineffective for failing to investigate and present his history of neglect and abuse to the jury; he also claimed multiple grounds of prosecutorial misconduct, including withholding evidence favorable to the defense and presenting false testimony.



Speer was sentenced to death in 2001 for the murder of Gary Dickerson, a fellow inmate at the Telford Unit. He is the first Inmate Coordinator for the Death Row Faith Based Program and one of the original members of this voluntary, immersive religious program.¹¹ Through the program, he developed deep faith in God and expressed sincere remorse for the violent acts of his past. The tools he learned in the program have enabled him to heal from the trauma, and horrific abuse he experienced as a child—mitigating evidence that was not presented to the jury.

Speer now ministers to others who are incarcerated, carrying a message of healing and redemption. He wants to devote the rest of his days to serving as a prison minister. Sammie Gail Martin, the sister of the man Speer killed, opposed his execution after learning about his participation in the Faith Based Program on death row and his selection as the first Inmate Coordinator.



¹¹ Jedidiah Murphy, Brent Brewer, and David Renteria also participated in the Faith Based Program on death row.

Dates Withdrawn

Three execution dates were withdrawn in 2023, with one later reset for 2024.

- On March 7, 2023, the 15th Judicial District Court in Grayson County withdrew **Andre Thomas's** April 5 execution date to allow his legal team reasonable time to investigate and prepare a threshold showing that Thomas is incompetent for execution. The judge has since held that the threshold showing has been made, and a determination of Thomas's competence will proceed in state courts. Dozens of Texas mental health professionals and advocates and more than 100 Texas faith leaders, along with national mental health organizations, supported Thomas's clemency application.

Thomas resides at the Wayne Scott Unit, TDCJ's psychiatric facility, where the most mentally ill Texas prisoners are housed. He suffers from schizophrenia and permanently blinded himself by gouging out both of his eyes in separate incidents—first while awaiting trial and the second soon after arriving on death row. Before the crime, Thomas sought treatment for the symptoms of his severe mental illness, but no one responded to his increasingly desperate pleas for help. Two days before murdering his wife, Lauren, his four-year old son, and her one-year-old daughter in Sherman (Grayson County) in 2004, he attempted suicide because he could no longer tolerate the voices in his head. Although Thomas was found to be psychotic by doctors at the local hospital, he was left alone and wandered away. An Emergency Detention Order was issued, but it was never carried out by local law enforcement.

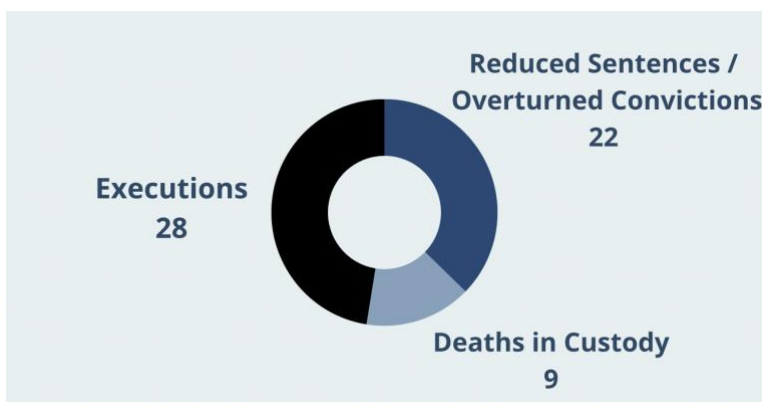
- The March 29, 2023, execution date for **Anibal Canales, Jr.**, was withdrawn to give his attorneys time to file a subsequent application for a writ of habeas corpus. Canales was convicted by a Bowie County jury of the 1997 death of Gary Dickerson while both were inmates at the Telford Unit.
- A district court judge in Collin County withdrew the April 26, 2023, execution date for **Ivan Cantu** after agreeing additional legal proceedings were necessary. Cantu was convicted of killing two people in Far North Dallas: his cousin James Mosqueda and James's fiancé, Amy Kitchen. He has maintained his innocence, and in previous appeals he has argued his trial attorneys were ineffective for failing to investigate and present evidence that would support his claim. Two of the jurors who sentenced him to death want this new evidence to be reviewed, declaring they are disturbed by the prospect they heard false and misleading testimony during the trial. In August, the Texas CCA denied these appeals. A new execution date has been set for February 28, 2024.

One other scheduled execution in 2023 did not occur. As noted in detail below in Deaths in Custody, **Henry ("Hank") Skinner** was set to be put to death on September 13, 2023, his sixth scheduled execution date over nearly three decades on death row for a crime he maintained he did not commit. Skinner died on February 16, 2023, due to a medical issue.

Reduced Sentences and Deaths in Custody

In 2023, Texas’s death row population decreased by six people for reasons other than execution. Collectively, these six men spent 109 years on death row. Over the past five years, thirty-one people have been removed from death row in Texas due to sentence reductions or overturned convictions¹² (twenty-two) or deaths in custody (nine); one-third of these cases came from Harris County. During this same timeframe, the State executed twenty-eight people.

**Executions vs. Removals from Death Row
2019-2023**



Reduced Sentences

Four men received reduced sentences in 2023.¹³ In three of these cases, the men were determined to be intellectually disabled and therefore ineligible for execution.

- In June, **Steven Long**’s death sentence was overturned by the Texas CCA. He was resentenced to life in prison due to evidence of his intellectual disability. Long faced execution in 2017 for killing 11-year-old Kaitlyn Smith in Dallas in 2005 but received a stay.
- In April, the Texas CCA agreed with the trial court in Harris County that **Joseph Jean** meets the standard for intellectual disability and ordered his death sentence be changed to life without parole. Jean had been on death row since 2011 for killing teenaged cousins Chelsy Lang and Ashley Johnson.
- In October, McLennan County prosecutors abandoned efforts to secure another death sentence for **US Carnell Petetan, Jr.** In 2021, the Texas CCA vacated his death sentence and remanded the case to McLennan County for a new punishment trial after finding “... the evidence was factually insufficient to support the jury’s rejection of the intellectual disability

¹² This tally includes Joseph Colone and Clinton Young, whose convictions were overturned in state habeas proceedings due to the misconduct of state actors. Both men currently are still under indictment and awaiting new trials; Jefferson County prosecutors are not seeking another death sentence for Colone.

¹³ Long still appears on TDCJ’s list of inmates on death row, but he is now incarcerated in the Byrd Unit.

special issue.”¹⁴ Petetan was resentenced to life in prison without parole for killing his estranged wife, Kimberly Petetan, in 2012.

Sixteen men now 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. Most of these individuals spent decades on death row even though the Court’s 2002 ruling in *Atkins v. Virginia*, prohibiting the death penalty for persons with intellectual disability, had rendered them ineligible for execution.

In the fourth case, **Syed Rabbani** was resentenced to life in prison on November 14, 2023, after spending thirty-five years under an unconstitutional death sentence. His appeal was filed in 1994, but it fell by the wayside after a trial court judge determined Rabbani was incompetent to be executed. The Harris County District Clerk’s Office rediscovered the appeal—one of over 100 similar cases identified by county officials—and forwarded it to the Texas CCA for review in 2022.

The Texas CCA overturned Rabbani’s death sentence on September 6, 2023, after determining the trial court failed to instruct jurors on how to weigh mitigating factors—including evidence of Rabbani’s mental illness—in answering the special issues submitted to them during the sentencing phase of his trial (a *Penry* violation—see page 3 for details). In November, the Harris County DA’s Office informed a district court judge at a resentencing hearing that the office would not pursue the death penalty again.

A jury sentenced Rabbani to death in 1988 for the fatal shooting of a fellow Bangladeshi immigrant, Mohammed Jakir Hasan, at a Houston convenience store. Since his conviction, his mental and physical health has deteriorated significantly. He is now bedridden, blinded by cataracts, and rendered nearly immobile and incommunicative by a stroke. Rabbani has been diagnosed with schizophrenia and schizoaffective disorder by doctors at TDCJ. His attorneys have asked for him to be transferred to hospice care or paroled into the custody of his family in Bangladesh.

Death in Custody

Two men died in custody in 2023.

- **Terence Andrus** took his own life on January 21, 2023, after struggling with mental illness while on death row. On June 13, 2022, the U.S. Supreme Court denied Andrus’s petition for certiorari and summary reversal over a vigorous dissent by Justice Sonia Sotomayor, joined by Justices Stephen Breyer and Elena Kagan. Andrus was sentenced to death in Fort Bend County in 2012 after receiving abysmal legal representation at trial. He was twenty years old when he killed two people during an attempted carjacking while high on PCP-laced marijuana. 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.”¹⁵

Andrus v. Texas raised important questions regarding the rule of law. In 2020, the Supreme Court found that Andrus’s trial lawyer had, among other things, failed to investigate or present extensive mitigating evidence about Andrus’s background of abuse, poverty, and mental illness. The Justices

¹⁴ See <https://search.txcourts.gov/SearchMedia.aspx?MediaVersionID=019e6f92-52e5-4d90-87fa-7dab8e2322f5&coa=coscca&DT=OPINION&MediaID=df039cff-c8ae-49e4-a77e-ec19732be248>.

¹⁵ See https://www.supremecourt.gov/opinions/21pdf/21-6001_3d9g.pdf.

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 directive of the Justices, 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 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 numerous misconstructions of the habeas record—all points noted by Justice Sotomayor in her 25-page dissent.

- **Henry (“Hank”) Skinner** passed away at a hospital in Galveston on February 16, 2023, at the age of sixty, due to complications from a surgery to remove a brain tumor. He spent more than twenty-seven years on death row for a crime he staunchly maintained he did not commit—the New Year’s Eve 1993 murders of his girlfriend, Twila Jean Busby, and her two intellectually disabled adult sons, Elwin Caler and Randy Busby, in their home in Pampa in the Texas Panhandle. Skinner had faced multiple execution dates—including one on September 13, 2023—and was still in the process of challenging his conviction. In March 2010, the U.S. Supreme Court granted Skinner a last-minute stay of execution to determine whether to consider his appeal related to key pieces of evidence collected at the crime scene that had never been subjected to DNA testing. He reportedly had already eaten his “last meal” when he received word of that stay.

Lethal Injection issues

Several individuals with execution dates in early 2023 were part of a lawsuit alleging Texas is violating its own law and creating a serious risk of pain and suffering during executions by using compounded pentobarbital that expired as far back as 2019. A petition for a temporary injunction was filed initially on December 14, 2022, by counsel for Wesley Ruiz and John Balentine, whose executions were scheduled for February. Other individuals with execution dates in early 2023—including Robert Fratta, Arthur Brown, and Gary Green— later joined the suit.

On January 4, 2023, the Texas CCA barred Texas civil courts from considering the lawsuit or issuing any order to stay the executions; two judges dissented from the opinion. On January 10, 2023, however, Judge Catherine A. Mauzy of the 419th District Court of Travis County ruled that TDCJ cannot carry out executions with expired drugs. Following a nearly three-hour hearing earlier that day, Judge Mauzy granted the prisoners’ petition and issued a temporary injunction prohibiting TDCJ from injecting the prisoners with expired drugs in violation of the Texas Pharmacy Act, the Texas Controlled Substances Act, the Texas Food, Drug, and Cosmetic Act, and the Texas Penal Code.

Fratta’s execution proceeded as scheduled on January 10 after the Texas CCA lifted the temporary injunction granted by Judge Mauzy and the Texas Supreme Court denied his motion regarding the lawsuit and injunction. The other men named in the lawsuit also were executed as scheduled.

Individuals who faced execution dates in October and November raised additional concerns about the drugs the State planned to use for their executions. In various lawsuits, they alleged that vials of compounded pentobarbital were exposed to extreme heat and smoke during an August 25, 2023, fire at

the Huntsville Unit, where executions take place in Texas, rendering them unsafe. The lawsuit claimed pentobarbital quickly degrades when exposed to high temperatures, compromising its chemical structure and potency. Federal courts denied all requests for stays on those grounds, however.

Significant Post-Conviction Hearings and Rulings

In 2023, state and federal courts ruled on or refused to consider a wide range of post-conviction challenges, including innocence, the use of forensic evidence, and competency to be executed.

Cases Involving Forensic Evidence

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

- On January 11, 2023, the Texas CCA issued a perfunctory three-page decision denying relief to **Robert Roberson** despite copious new evidence of his innocence, which was presented during Roberson's nine-day evidentiary hearing in Anderson County. Roberson was convicted and sentenced to death in 2003 for the death of his two-year-old daughter, Nikki. He has consistently maintained his innocence, and there is significant evidence that Niki's death was a tragic accident exacerbated by her chronic illness, not a homicide.

Roberson's evidentiary hearing focused on four claims, including an actual innocence claim and the use of false, misleading, and scientifically invalid testimony. The Texas CCA decision ignored hundreds of pages of scientific articles describing the evolution of scientific understanding since his 2003 trial, and it disregarded amicus briefs filed in support of Roberson by the Center for Integrity in Forensic Sciences and by a group of exonerees who were wrongly convicted under the same discredited "Shaken Baby Syndrome" hypothesis the State asserted during Roberson's trial.

In May, Roberson filed a cert petition with the U.S. Supreme Court asking the Justices to reverse the lower court decision denying him a new trial. Scientists, physicians, the Center for Integrity in Forensic Sciences, retired federal judges, and innocence groups filed briefs with the Court in support of Roberson, but the Justices declined to consider his case. Roberson may be the only person on death row nationwide who was convicted under the "Shaken Baby" hypothesis.

- On June 28, 2023, the Texas CCA rejected **Rodney Reed's** petition for relief despite significant evidence of his innocence and claims of prosecutorial misconduct. Reed has been on death row since 1998 for killing Stacey Stites, a crime he has steadfastly maintained he did not commit. Earlier in the year, on April 19, 2023, the U.S. Supreme Court determined in a 6-3 decision that the statute of limitations on a due process claim relating to a state's DNA-testing procedures had not run out on Reed. Reed seeks DNA testing of key crime scene evidence, including the belt used to strangle Stites, which has never been tested. After he was denied access to DNA testing in state court, Reed filed a federal lawsuit alleging the violation of his right to due process. Federal courts ruled that Reed had run out of time to file his lawsuit, but with the Supreme Court's ruling in *Reed v. Goertz*, Reed will be able to pursue his quest for DNA testing in federal court.
- On January 9, 2023, the U.S. Supreme Court ordered the Texas CCA to reconsider its decision related to the false testimony claim of **Areli Escobar** in light of the State's confession of error. Prosecutors in Travis County support Escobar's request for a new trial and agree with defense attorneys that the conviction is based on flawed DNA evidence. Escobar was convicted of killing Bianca Maldonado Hernandez in 2011 in Austin. 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 numerous convictions.

On September 27, 2023, the Texas CCA affirmed its denial of relief to Escobar by a vote of 6 to 3 after concluding the new evidence presented by the defense was not material because it did not change the court's original assessment that the conviction should stand.

Cases Involving Competency to be Executed

On September 28, 2023, the U.S. District Court for the Western District of Texas determined that **Scott Panetti** is not competent for execution. Federal District Court Judge Robert Pitman presided over a three-day hearing in October 2022, during which he heard from experts about Panetti's current mental status. 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 auditory 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 at the time the State sets an execution date.

In a response to the ruling, Panetti's attorney, Gregory W. Wiercioch, stated, "Judge Pitman's ruling prevents the State of Texas from exacting vengeance on a person who suffers from a pervasive, severe form of schizophrenia that causes him to inaccurately perceive the world around him. ... executing him would not serve the retributive goal of capital punishment and would simply be a miserable spectacle."¹⁶

Legislative Developments

The Regular Session of the 88th Texas Legislative session adjourned sine die on May 29, 2023. Bills to abolish the death penalty were filed in both chambers by State Representative Joe Moody (House District 78-El Paso) and State Senator Sarah Eckhardt (Senate District 14-Austin). Although the abolition bills did not receive committee hearings, the Texas House of Representatives passed nearly a dozen bills related to the administration of the death penalty with significant bipartisan support. The State Senate did not act on any of these bills, which included the following:

- House Bill 188 would have revised and clarified the jury instructions provided during the sentencing phase of a capital murder trial to underscore the unanimity requirement. The bill was sponsored by Representative Moody and passed the House on April 20, 2023, by a vote of 140 to 4. The House passed similar legislation in the previous two sessions.
- House Bill 180 by Representative Moody would have required a court that sets an execution date to withdraw that date on the motion of the prosecuting attorney with jurisdiction over the case. It passed the House on April 13, 2023, by a vote of 122 to 23.
- House Bill 381 would have established a process for determining whether a defendant in a capital case is a person with an intellectual disability and prohibited the death penalty for persons found to

¹⁶ See <https://docs.google.com/document/d/1s0H6L4bsxjxtLNtszxCYU6C3tLXpDsWlgceUzRCU2CA/edit>.

be intellectually disabled. The bill was sponsored by State Representative Senfronia Thompson (House District 141 – Houston) and passed the House on May 9, 2023, by a vote of 99 to 38.

- House Bill 727 would have exempted a defendant with schizophrenia or schizoaffective disorder at the time of the crime from the death penalty; the determination would be made by the jury. The bill was sponsored by State Representative Toni Rose (House District 110 – Dallas) and passed the House on April 5, 2023, by a vote of 97 to 48. It is the third consecutive session the House has passed such a bill.

New Voices

Texas Conservatives Concerned About the Death Penalty (CCATDP) launched in September 2023. It is a network of political and social conservatives questioning the alignment of capital punishment with conservative principles and values.

National Developments

In April, Washington Governor Jay Inslee signed Senate Bill 5087, which removes state laws deemed invalid or unconstitutional. In 2018, Washington’s Supreme Court struck down the death penalty based on its arbitrary and racially biased application, but the law had remained on the books until this year. Currently, twenty-three states have abandoned the death penalty through legislative or judicial action and several others have paused executions.

Public Opinion

According to the results of a Gallup poll released on November 6, 2023, more Americans now say the death penalty is applied unfairly (50 percent) than fairly (47 percent). This is the first time since Gallup started asking about fairness back in 2000 that a majority of respondents indicated they think the death penalty is applied unfairly.

Conclusion

As the number of Texas counties devoting resources to costly death penalty trials dwindles each year—and as prosecutors across the state waive the death penalty in case after case—capital punishment remains a “lethal lottery.” Even the cases proceeding to trial with death on the table are resulting in a punishment of life in prison one-third of the time.

Individuals who are set for execution often were convicted decades 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 courts’ resistance to reviewing or assessing new evidence even in cases with strong showings of actual innocence underscores the absence of meaningful safeguards in the legal system.

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.

Table 1: New Death Sentences in Texas in 2023

TDCJ Number	Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
999629	Chavez	Facundo	09/05/1991	M	Hispanic	09/07/2023	El Paso	03/22/2019
999628	Marks	Cedric	07/15/1974	M	Black	06/16/2023	Bell	01/03/2019
999627	Satterfield	Robert	09/27/1981	M	White	02/02/2023	Wharton	06/10/2018

Table 2: Texas Executions in 2023

Execution	Last Name	First Name	TDCJ Number	Age	Date	Race	County
586	Renteria	David	999460	53	11/16/2023	Native American	El Paso
585	Brewer	Brent	999000	53	11/9/2023	White	Randall
584	Murphy	Jedidiah	999392	48	10/10/2023	White	Dallas
583	Brown, Jr.	Arthur	999110	52	3/9/2023	Black	Harris
582	Green	Gary	999561	51	3/7/2023	Black	Dallas
581	Balentine	John	999315	54	2/9/2023	Black	Potter
580	Ruiz	Wesley	999536	43	2/1/2023	Hispanic	Dallas
579	Fratta	Robert	999189	65	1/10/2023	White	Harris

Source for both: Texas Department of Criminal Justice