

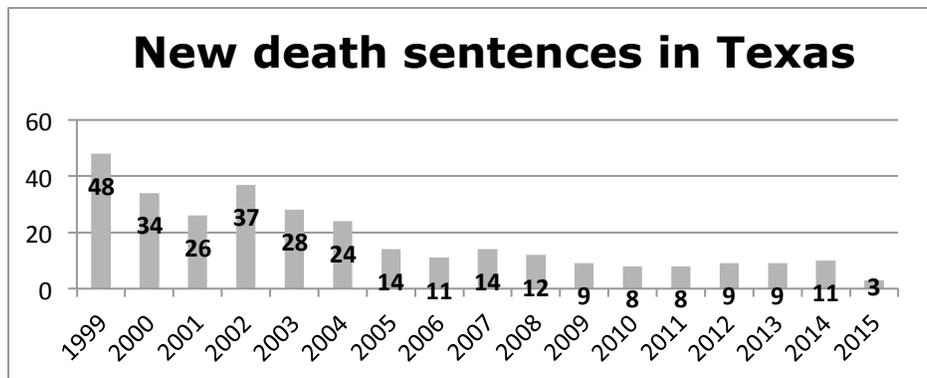
Texas Death Penalty Developments in 2015: The Year in Review

The Texas Coalition to Abolish the Death Penalty (TCADP) publishes this annual report to inform citizens and elected officials about issues associated with the death penalty in Texas during the past year. It presents information on new death sentences, executions, and stays; reduced sentences; wrongful convictions; judicial and legislative developments; and other issues affecting the administration of justice in Texas.

Death Sentences

New Death Sentences

This year, new death sentences fell to their lowest number since the U.S. Supreme Court upheld Texas' revised capital punishment statute in 1976. Juries condemned three new individuals to death, according to data compiled from media outlets and the Texas Department of Criminal Justice (TDCJ). Death sentences peaked in 1999, when juries sent 48 people to death row.



The first death sentence of the year was not imposed until October 7, representing 9 months and 17 days since the previous death sentence was imposed in Texas.¹

Death Sentences by County

An analysis of data from 2011 to 2015 reveals that only 20 Texas counties have imposed death sentences in the last 5 years; of these, only 11 counties have done so in the last 2 years.² In 2015, just three counties (Bexar, Brazos, and Smith) accounted for new death sentences:

- On October 7, after more than seven hours of deliberation, jurors in Brazos County sentenced Gabriel Hall to death for murdering Edwin Sharr and attacking Linda Sharr in their home in College Station in 2011. Hall was an 18-year-old high school student at the

¹ Eric Williams was sentenced to death on December 17, 2014.

² View maps of new death sentences by county from 2011 to 2015 at <http://tcadp.org/get-informed/death-sentences-by-county/2011-2015-new-death-sentences/> and from 1974 to 2015 at <http://tcadp.org/get-informed/death-sentences-by-county/1976-2015-county-map/>.

time of the crime. He had been adopted from the Philippines. County officials have estimated the cost of Hall’s trial to be as high as \$2 million, with County Auditor Katie Conner calling it the most expensive trial in her 10-year tenure.³

Since 2009, prosecutors in Brazos County have pursued the death penalty in numerous cases where the defendants presented evidence of intellectual disabilities or severe mental illness. See pages 13-14 for details on one such case.

- A jury in Smith County sentenced James Calvert to death on October 14 for murdering his ex-wife Jelena Sriraman and kidnapping their four-year-old son in 2012. Calvert was allowed to represent himself for much of the trial, during which he was prone to frequent outbursts, nonsensical questioning of witnesses, and other disruptive behavior. At one point, after his right to self-representation had been revoked, the sheriff’s department activated Calvert’s shock belt after he refused to comply with the judge’s order to stand.
- On October 20, after more than a day of deliberation, a jury in Bexar County sentenced Mark Anthony Gonzalez to death for the 2011 murder of Bexar County Sheriff’s Sgt. Kenneth Vann. It was the first death sentence imposed by a jury in Bexar County since 2009.⁴ The punishment will not be finalized until after a hearing to determine Gonzalez’s competency to stand trial. That hearing is scheduled to take place in January 2016.

Just eight counties – 3% of the 254 counties in Texas – account for 70% of new death sentences since 2011.

Texas’ Highest Death Sentencing Counties Since 2011							
	2011	2012	2013	2014	2015	Total 2011-2015	Total Since 1974
Harris	3	0	1	4	0	8	294
Dallas	0	2	3	0	0	5	107
Tarrant	1	2	0	1	0	4	73
McLennan	0	1	1	1	0	3	18
Travis	1	0	0	1	0	2	20
Smith	0	1	0	0	1	2	24
Brazos	0	1	0	0	1	2	17
Fort Bend	1	1	0	0	0	2	11
Total	6	8	5	7	2	28	564
Total All Counties	8	9	9	11	3	40	1,092

Among the highest death sentencing counties in Texas, there were several noteworthy developments in 2015:

- This is the first year since reinstatement of the death penalty that jurors in Harris, Dallas, and Tarrant Counties did not sentence anyone to death in a new case. These three counties –

³ “Gabriel Hall Trial Comes at High Cost to Brazos County,” KBTX.com, October 8, 2015

⁴ Bexar County jurors rejected the death penalty in four other cases in recent years.

along with Bexar County – account for half of the death sentences imposed in Texas since 1974 (550 total sentences).

- Prosecutors in Dallas and Tarrant Counties did not pursue the death penalty in any new capital murder trials in 2015. The last death sentence imposed in Dallas County came in 2013.
- The Harris County District Attorney’s Office sought the death penalty in one new case but the jury rejected it (see page 4 for details).

Death Sentences by Race

Of the three men sentenced to death this year, one is white, one is Asian, and one is Hispanic. All of their cases involved a single white murder victim.

Notably, this is the first year since reinstatement that an African-American defendant did not face the death penalty in Texas. Over the last five years, nearly 60% of all new death sentences in Texas have been imposed on African-Americans.

In the two highest sentencing counties, these patterns of racial bias are even more pronounced:

- Fifteen of the last eighteen defendants sentenced to death in Harris County are African-American and the other three are Hispanic. Jurors rejected the death penalty in two other trials involving Hispanic defendants (one in 2008 and one in 2015). The last death sentence sought and imposed on a white defendant in Harris County came in November 2004, when serial killer Anthony Shore was sent to death row.
- Of the eleven men sentenced to death in Dallas County since 2008, eight are African-American and two are Hispanic.

New Death Sentences by Race of Defendant						
	2011	2012	2013	2014	2015	Total Sentences by Race
African-American	4	7	7	5	0	23
Hispanic	2	1	1	2	1	7
Asian	0	0	0	0	1	1
Total People of Color	6	8	8	7	2	31
White	2	1	1	4	1	9
Total Sentences	8	9	9	11	3	40

While African-Americans comprise only 12.5% of the population of Texas, they constitute 42.5% of death row inmates, according to TDCJ. Hispanics comprise 27.4% of individuals on death row

in Texas (38.6% of the population of Texas), and whites comprise 28.2 % (43.5% of the Texas population).⁵

As of November 19, 2015, TDCJ counted 252 death row inmates, which includes 6 women.⁶ This remains the lowest Texas death row population since 1987. More than one-third of these individuals were convicted in Harris County.⁷ Texas has the third-largest death row population in the nation, after California (745) and Florida (392).

Jury Rejections

Death-qualified juries rejected the death penalty in four capital murder trials in 2015, including two in Nueces County. Three of the four cases involved multiple murder victims; all four defendants are Hispanic.

- On March 12, after nine hours of deliberation, a Tarrant County jury determined that mitigating factors warranted a sentence other than the death penalty for Gabriel Armandariz. Armandariz was convicted of killing his sons Luke, six months old, and Gatlin, two years old, in April 2011 in Graham, Texas. The trial was moved from Young County to Tarrant County. According to the *Fort Worth Star-Telegram*, the jury selection process took six weeks, while the trial itself lasted three weeks.
- On February 27, a Nueces County jury sentenced Brendon Gaytan to life in prison without the possibility of parole for the 2014 shooting deaths of two-year old Lillyanna Valent and six-year old Nevaeh Oliva in February 2014. It reportedly took jurors almost three days of deliberating to find Gaytan guilty of capital murder. They determined he did not present a future danger.
- On June 18, a Nueces County jury rejected the death penalty for Daniel Garcia, who was convicted of capital murder in the robbery and death of convenience store owner Mostafa “Ben” Bighamian in Corpus Christi in 2014. Garcia has been sentenced to life in prison without the possibility of parole. The jury reportedly deliberated about his punishment for about two hours. Nueces County has not sent anyone to death row since 2010.
- In Harris County’s first death penalty trial of the year, which began in late October, jurors deliberated for 12 hours before rejecting the death penalty for Jonathan Sanchez based on mitigating evidence. They convicted him of capital murder in the 2013 deaths of Yosselyn Alfaro, Daniel Munoz, and Veronica Hernandez. Sanchez will spend the rest of his life in prison.

Since 2010, death-qualified juries have rejected the death penalty in at least 18 capital murder trials in Texas.

⁵ See http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html for more information.

⁶ Mark Anthony Gonzalez has not yet been received on death row. See page 2.

⁷ TDCJ counted 89 inmates from Harris County as of November 19, 2015.

Resentenced to Death

- On November 30, a Harris County jury resentenced William "Billy the Kid" Mason to death for kidnapping and murdering his wife Deborah Ann Mason in Humble in 1991. Mason, now 61 years old, received a new sentencing hearing as the result of a U.S. Supreme Court ruling in the case of Johnny Paul Penry, which determined that jurors must have an opportunity to consider mitigating evidence in the punishment phase of death penalty trials. According to the *Houston Chronicle*, "The landmark Penry cases brought almost 20 cases back to Harris County that have slowly wound their way through the retrial process."⁸

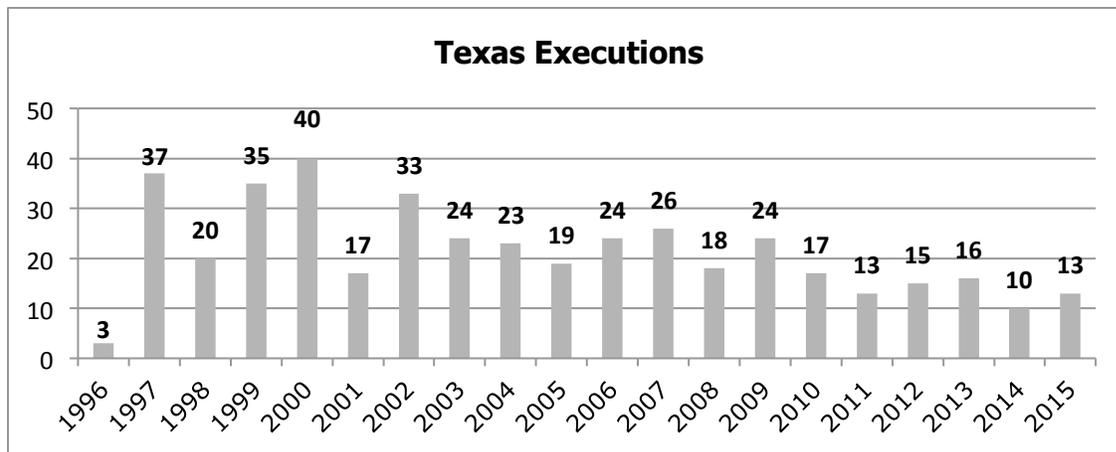
Executions

The State of Texas executed 13 people in 2015, accounting for nearly half of all U.S. executions this year (13 out of 28). Last year, Texas accounted for less than 30% of U.S. executions.

Just six states were responsible for executions this year. Of these, only Texas and Missouri carried out executions between February and August.

U.S. Executions in 2015	
Texas	13
Missouri	6
Georgia	5
Florida	2
Oklahoma	1
Virginia	1
Total	28

Texas has executed a total of 531 people since 1982; of these, 279 occurred during the administration of Governor Rick Perry (2001-2014), more than any other governor in U.S. history. Executions peaked in Texas in 2000, when 40 people were put to death.



Several of the men executed this year were barely legal adults at the time of the crime. Juan Garcia was just 18 years old at the time of the offense, while Derrick Charles was only 19 years old. Three other defendants were 20 at the time of the crime. A 2005 ruling by the U.S. Supreme Court prohibits the death penalty for those under age 18 at the time of the crime.

⁸ "New jury returns Harris County man to death row for 1987 slaying," *Houston Chronicle*, November 21, 2014

Of those executed, Daniel Lopez served only five years on death row, while Lester Bower, Jr. served 31 years. The average amount of time spent on death row for all of the men executed in 2015 was 16 years.⁹

The State of Texas put to death individuals with intellectual disabilities, those with evidence of severe mental illness, and one with a compelling case of innocence.

- On January 29, the State of Texas put Robert Ladd to death for the 1996 murder of Vicki Ann Garner in Tyler (Smith County). The U.S. Supreme Court rejected an appeal that evidence of Ladd's intellectual disabilities, including an IQ of 67, should bar his execution, in accordance with the Court's own ruling in *Atkins v. Virginia* (2002). In *Atkins*, the Court left it to each state to set forth criteria for determining whether an individual is intellectually disabled. As a result, the Texas Court of Criminal Appeals determined its own, unscientific standards, known as Briseño factors, which were based in part on the character of Lennie in John Steinbeck's novel *Of Mice and Men*.
- On May 12, the State of Texas executed Derrick Charles for the murders of 15-year-old Myiesha Bennett, her mother, Brenda Bennett, and her grandfather, Obie Lee Bennett, in 2002 in Harris County. Charles was 19 years old at the time. According to his attorneys with the Texas Defender Service, he suffered from symptoms of severe mental illness throughout his life.
- The State of Texas executed Lester Bower, Jr. on June 3, more than 31 years after he was convicted of the shooting deaths of four men – Jerry Brown, Bob Tate, Philip Good, and Ronald Mayes – at an ultra-light airplane hangar near Sherman in 1983.

Bower faced six previous execution dates. In February 2015, the U.S. Supreme Court stayed his execution but later declined to consider his appeal. Bower's attorneys had asked the Court to consider whether executing a defendant who has served more than 30 years on death row constitutes cruel and unusual punishment, in violation of the 8th and 14th Amendments of the U.S. Constitution.

Bower's attorneys also asked the Supreme Court to consider whether Texas' previous capital punishment statute allowed jurors to consider mitigating evidence of good character. Bower's trial took place before the Court's ruling in the case of Johnny Paul Penry, which determined that jurors must be given an opportunity to consider mitigating evidence in the punishment phase of death penalty trials. Dozens of people on death row in Texas have received new sentencing hearings as a result of that ruling.

Sentenced to death in Grayson County in 1984, Bower was one of the state's longest serving death row inmates and, at age 67, he was the oldest person put to death in Texas. A former chemical salesman with no prior criminal history, Bower consistently maintained his innocence. According to *The Guardian*, "there was no hard evidence linking him to the

⁹ Excluding Lester Bower, the average amount of time spent on death row was approximately 14.5 years.

crime scene, the weapon was not recovered and witnesses came forward in later years who said that he had nothing to do with the murders.”¹⁰

- On August 12, the State of Texas put Daniel Lopez to death for killing a 20-year veteran with the Corpus Christi Police Department, Lt. Stuart Alexander, with his truck during a high-speed chase in 2009. Lopez asked the courts to expedite his execution and was found competent to do so. He was 27 years old.

At least 28 other individuals on death row in Texas have been put to death after deciding to forego further appeals in their cases.

- On November 18, the State of Texas carried out its final execution of the year, putting Raphael Holiday to death for the arson murders of three young children in 2000 in Madison County: Tierra Lynch, 7, Jasmine DuPaul, 5, and 18-month-old Justice Holiday, his daughter. Earlier in the day, Madison County State District Judge Hal Ridley granted a motion by Holiday’s original trial lawyers to stay the execution so that Holiday could pursue additional appeals and a meaningful effort at clemency. At the request of special prosecutors in the Texas Attorney General’s Office, however, the Texas Court of Criminal Appeals vacated the stay and the execution proceeded.

In the months leading up to his execution, Holiday’s court-appointed attorneys, Seth Kretzer and Wes Volberding, told him there was nothing else they could do for him after the U.S. Supreme Court rejected his appeal. Against Holiday’s express wishes, they refused to file a petition for clemency with the Texas Board of Pardons and Paroles. They later filed a clemency petition after criticism began to mount.¹¹

See Appendix B for a complete list of individuals put to death in 2015.

Executions by Race

Of the 13 men put to death by the State of Texas this year, six were Hispanic, four were African-American, and three were white. Since 1982, the State of Texas has executed 231 individuals who were white, 197 who were African-American, 99 who were Hispanic, and 4 who had another racial identity.

Collectively, seven of the executions this year involved cases with white victims, four involved Hispanic victims, and two involved African-American victims.

In total, 371 executions in Texas have resulted from cases involving white victims, 85 involved Hispanic victims, and 72 involved African-American victims.

¹⁰ “Texas executes Lester Bower after 31 years on death row,” *The Guardian*, June 3, 2015

¹¹ Another individual on death row, Robert Roberson III, recently sought to have a court cure an alleged conflict of interest created by Kretzer and Volberding’s joint representation. Roberson alleged that the conflict of interest was preventing him from litigating his Sixth Amendment claim, but the U.S. Supreme Court rejected his petition to add another appointed attorney on December 7, 2015.

Executions by County

Bexar County accounted for three executions in 2015. Dallas, Harris, and Smith Counties each executed two inmates. Ellis, Grayson, Madison, and Nueces Counties each were responsible for one execution.

Harris County alone accounts for 124 executions, more than any state except Texas. Dallas County accounts for 55 executions, and Bexar County accounts for 42.

Five executions have been scheduled for the first few months of 2016, including two cases from Harris County.

Lethal Injection Developments

This spring, the Texas Department of Criminal Justice (TDCJ) nearly depleted its supply of compounded pentobarbital and had to scramble to replenish its stock.¹² TDCJ managed to obtain drugs from an unidentified compounding pharmacist, refusing to disclose information regarding the source. Later in the year, TDCJ provided drugs – also from an unnamed source – for use in an execution in Virginia.

On the heels of a 2014 ruling from the Texas Attorney General's Office, state legislators passed a bill that will keep secret the identity of any person or entity providing the drugs used in Texas executions. Senate Bill 1697 makes confidential for the purposes of the Texas Public Information Act any identifying information of persons or entities who come into contact with the compound administered for executions, whether transporting, testing, procuring, supplying, administering, compounding, or manufacturing the substance. Learn more in Legislative Developments on pages 14-15.

According to several news services, TDCJ officials attempted to illegally import sodium thiopental from India this summer; prior to 2012, sodium thiopental was the first drug used in lethal injections in Texas. Officials with the Food and Drug Administration reportedly seized the shipment at the airport in Houston.

Meanwhile, pharmacists nationwide have become increasingly reluctant to play a role in lethal injections. In late March, the American Pharmacists Association adopted a new policy that discourages its 62,000 members from providing drugs for use in executions, as this runs counter to their role as health care providers. The Association's ethical stand came just days after the International Academy of Compounding Pharmacists adopted its own stance discouraging members from preparing or dispensing drugs for use in executions.

Nationally, executions are on hold in at least a dozen states due to litigation challenges related to lethal injection, problems obtaining drugs, or fallout from botched executions.

¹² "Texas set to run out of lethal injection drug, putting executions in doubt," *The Guardian*, March 9, 2015

Stays of Execution and Dates Withdrawn

Fourteen inmates scheduled for execution in 2015 received reprieves, including stays granted by the courts and the withdrawal of execution dates. The reprieves granted to Lester Bower, Jr. and Raphael Holiday were only temporary, however, and both men were executed (see pages 6-7 for more details). This constitutes the highest number of reprieves in recent years – in a typical year, around seven reprieves are granted.

Stays of Execution

Eight stays of execution came from the Texas Court of Criminal Appeals (CCA), the state's highest criminal court. Four of these cases involve African-American defendants, two involve Hispanic defendants, and two involve white defendants. Two of the defendants were 18 years old at the time of the crime for which they were convicted. Two of the cases originated in Harris County while two came from Smith County.

- On January 28, the CCA issued a reprieve to Garcia White, who was scheduled to be put to death that evening for the 1989 stabbing deaths of Bonita Edwards and her 16-year-old twin daughters, Annette and Bernette, in their Houston home. He was convicted by a Harris County jury in 1996. The court did not provide a reason for the stay.
- On March 5, the CCA halted the execution of Rodney Reed, which was scheduled to take place that same day. The court issued the stay to consider new evidence that may establish Reed's innocence in the 1996 murder of Stacey Stites in Bastrop County. Three top medical examiners have found it was medically and scientifically impossible for Reed to have committed this crime. Additional new evidence further supports the theory that it was the victim's fiancé, a former police sergeant who is now in prison for kidnapping and improper sexual contact with a person in custody, who committed the crime. Six judges agreed to the stay, which is "pending further order of this court."
- On March 16, two days before his execution was scheduled to take place, the CCA granted a reprieve to Randall Mays. He was convicted of killing Henderson County Deputy Sheriffs Tony Ogburn and Paul Habelt after a standoff on his property in 2007. The court agreed with Mays' lawyers that additional review is needed to determine if he is mentally competent for execution.
- On April 21, the CCA halted the execution of Richard Vasquez, scheduled to take place two days later. In their appeal, Vasquez's attorneys contended new research on shaken baby syndrome and head injuries debunks testimony from prosecution experts at his 1999 trial. Vasquez was convicted of killing his girlfriend's four-year-old daughter, Miranda Lopez, in Corpus Christi in 1998. He was 18 years old at the time of the crime. His trial attorneys failed to present mitigating evidence to the jury, including his introduction to drugs at a young age by his parents. Vasquez's original execution date of January 15, 2015 was rescheduled because the Governor was out of the state.
- Clifton Williams received a stay from the CCA hours before his scheduled execution on July 16. He was sentenced to death for the 2005 murder of 93-year-old Cecelia Schneider at her

home during a robbery in Tyler (Smith County). The stay was granted to allow time “to examine whether incorrect FBI statistics regarding DNA probabilities in population estimates cited by witnesses could have affected the outcome of Williams’ trial.”¹³

- Tracy Beatty, who was set to be put to death on August 13, received a stay of execution from the CCA on August 11. His attorneys argued Beatty had deficient legal help at his 2004 trial and during early appeals, and that prosecutors used improper testimony at his trial. He was convicted of killing his 62-year-old mother, Carolyn Click, in Smith County in 2003.
- On August 25, the CCA granted a stay of execution to Bernardo Aban Tercero, a national of Nicaragua who was set to be executed the following day. He was convicted of robbing a dry cleaning store and murdering customer Robert Keith Berger in 1997 in Houston. Tercero argued the shooting was an accident. According to Amnesty International, the jury in Tercero’s trial did not hear critical mitigating evidence about the deplorable conditions of his childhood in Nicaragua and his attorneys did little to investigate the case.

According to the *Houston Chronicle*, in an affidavit submitted to the court, witness Sylvia Cotera said she falsely testified at Tercero’s trial. The appeals court issued the stay to allow the trial court to consider the merits of the new appeal.¹⁴

- On October 12, the CCA granted a stay of execution to Julius Murphy, pending further order from the court. Murphy was set to be put to death on November 3 for the 1997 robbery and shooting of Jason Erie in Bowie County. On September 24, his attorneys filed pleadings presenting new evidence of prosecutorial misconduct that calls into question the reliability of his conviction and death sentence. This evidence relates to the testimony of two witnesses—the only witnesses to place Murphy at the crime scene and as the shooter. According to new affidavits, prosecutors threatened both witnesses with charges of murder or conspiracy to commit murder unless they testified for the State. Information about these threats was never disclosed to the jury.

Murphy, an African-American man, was 18 years old at the time of the crime and was sentenced to death by an all-white jury. His co-defendant, identified by one witness as the actual shooter, is serving a sentence of life in prison.

Execution Dates Withdrawn

State district judges withdrew execution dates for four individuals this year:

- A judge withdrew the April 28 execution date for Robert Pruett to allow for more DNA testing of evidence, including the murder weapon. Pruett was sentenced to death for the 1999 murder of correctional officer Daniel Nagle at the McConnell Unit in Beeville. He received a stay of execution in 2013 after prosecutors agreed to a request for DNA testing; a 2014 execution date also was withdrawn. Pruett has consistently maintained his innocence.

¹³ “Court delays Texas execution that had been set for Thursday,” *Associated Press*, July 16, 2015

¹⁴ “Appeals court stays execution of Houston killer after witness says she lied,” *Houston Chronicle*, August 25, 2015

- A state district judge withdrew the September 2 execution date for Joe Garza upon a joint motion from prosecutors and defense attorneys to allow for DNA testing. He was convicted of robbing and murdering 71-year-old preacher Silbiano Rangel in Lubbock in 1998.
- The September 29 execution date for Perry Williams was withdrawn following a hearing in federal district court regarding his lack of legal counsel. He was sentenced to death for killing medical student Matthew Carter during a robbery in Houston in 2000. Williams was 19 at the time of the crime.
- The October 28 execution date for Christopher Wilkins was withdrawn at the request of Tarrant County prosecutors. They sought the delay after the Texas Forensic Science Commission raised new concerns about DNA statistics and the interpretation of mixed DNA evidence.

Reduced Sentences and Individuals No Longer on Death Row

Two inmates received reduced sentences and were removed from death row in 2015. Three other individuals died while still in prison.

Reduced Sentences

- Guy Alexander was convicted of capital murder in the 1989 beating death of Wilma Wofford in Houston. In 2012, the Texas Court of Criminal Appeals unanimously agreed he should receive a new sentencing hearing because jurors were not afforded the opportunity to properly consider mitigating evidence in his case. In May 2015, he pled guilty to avoid the death penalty and agreed to waive any future appeals. His sentence was commuted to life in prison.
- In 2013, the 5th U.S. Circuit Court of Appeals overturned Nelson Gongora's conviction after agreeing with his attorneys that prosecutors in his 2003 murder trial should not have suggested his decision not to testify indicated guilt. A jury in Tarrant County sentenced Gongora to death for murdering Delfino Sierra in 2001 while robbing him. On December 23, 2014, his sentence was reduced to life. He was officially removed from death row on January 30, 2015.

Since 2011, more than 20 individuals have received reduced sentences and been removed from death row in Texas.

Deaths in Prison

- According to the Texas Department of Criminal Justice, John Matamoros died of natural causes on June 12 while on death row. He was convicted of murdering Edward George Goebel during a 1990 home burglary in Houston.
- Antonio Williams, who was sentenced to death in 2007 for the murders of Vincent Williams and Yolanda Styles, was found dead in his cell in the Harris County Jail on February 19. He was in Houston to attend hearings on his latest appeal. Last November, two witnesses

recanted their testimony naming Williams as the shooter; the two women said they were pressured by prosecutors and investigators to lie. Williams' death was ruled a suicide.

- Cathy Henderson, who spent nearly 20 years on death row in Texas, died in August in a hospital in Austin. She was convicted of capital murder in the death of three-month-old Brandon Baugh in 1994. The Texas Court of Criminal Appeals overturned Henderson's conviction in 2012 based on scientific advances that cast doubt upon expert testimony about the baby's cause of death. Henderson maintained it was an accident.

The Travis County District Attorney's Office planned to retry Henderson on capital murder charges in the fall of 2015 but was not seeking another death sentence. On June 12, however, Henderson pled guilty to murder and was sentenced to 25 years in prison. According to the *Austin American-Statesman*, she could have been released in four years with credit for time served.¹⁵ Henderson was just two days away from being executed in 2007 when the Court of Criminal Appeals granted a stay and ordered an evidentiary hearing.

Wrongful Convictions

Alfred Dewayne Brown

On June 8, 2015, Harris County District Attorney Devon Anderson announced her office was dismissing capital murder charges against Alfred Dewayne Brown after determining there was insufficient evidence to support another conviction. That same day, he left the county jail in Houston as a free man. Brown spent a decade on death row for the murders of Houston Police Officer Charles R. Clark and store clerk Alfredia Jones at a check-cashing business in 2003. He consistently maintained his innocence.

Last November, the Texas Court of Criminal Appeals overturned Brown's conviction and death sentence after finding the Harris County District Attorney's Office had withheld material evidence favorable to Brown's case, specifically, a record of a phone call corroborating his claim that he was at his girlfriend's apartment the morning the murder took place. At his trial, Brown's attorneys presented no evidence of his alibi. His girlfriend changed her own testimony after she was threatened with prosecution by a grand jury.

In 2013, a homicide detective found a box of phone records in his garage; among the records was a file indicating Brown made the call exactly when he asserted. That file was never shared with Brown's defense counsel.¹⁶ The Harris County District Attorney's Office agreed that relief should be granted.

Brown is the 13th person released and exonerated from death row in Texas.

¹⁵ "Cathy Lynn Henderson, babysitter convicted of murder, dies in hospital," *Austin American-Statesman*, August 3, 2015

¹⁶ "Appeals court resets murder trial after finding evidence withheld," *Houston Chronicle*, November 5, 2014

Anthony Graves

On June 12, 2015, the State Bar of Texas found Charles Sebesta, the former District Attorney of Burleson and Washington Counties, guilty of “professional misconduct” and disbarred him. Sebesta was the prosecutor responsible for the wrongful conviction of Anthony Graves. During Graves’ trial, he withheld critical information from the defense and allowed witnesses to give false testimony. Graves was exonerated in October 2010 after spending 18 years in prison, including 12 years on death row, as an innocent man. He faced two serious execution dates.

Nationwide

Nationally, six individuals were exonerated and released from death rows in 2015; collectively, they spent 114 years in prison for crimes they did not commit. Three of them spent more than 25 years in prison. A total of 156 people have been exonerated from death rows nationwide since 1973, including 13 individuals in Texas.¹⁷

Wrongful Executions

Cameron Todd Willingham

In March, the State Bar of Texas filed a formal accusation of misconduct against John H. Jackson, the Navarro County prosecutor who convicted Cameron Todd Willingham. Willingham was executed in 2004 for the 1991 arson murder of his three young daughters in Corsicana, despite compelling evidence of his innocence.

The bar’s disciplinary petition, based on a grievance filed last summer by the Innocence Project, accused Jackson of obstruction of justice, making false statements, and concealing evidence favorable to Willingham’s defense. Last year, journalists exposed the fact that Jackson worked for years to assist Johnny Webb, the jailhouse informant whose testimony was instrumental in Willingham’s conviction.

Other Case Developments

There were significant developments in several other death penalty cases in 2015:

- On February 25, the Texas Court of Criminal Appeals granted a rare hearing to Linda Carty to review claims of prosecutorial misconduct in her case. Carty, a British citizen and native of the Caribbean island of St. Kitts, was sentenced to death for plotting the 2001 murder of her neighbor, Joana Rodriguez, in order to steal Rodriguez’s newborn baby. According to the *Houston Chronicle*, “a DEA agent and two of Carty’s co-defendants allege that Harris County prosecutors crossed ethical boundaries and threatened them to ensure Carty’s conviction.”¹⁸
- In July, Brazos County District Judge Travis Bryan III agreed with appellate lawyers for John Thuesen that his original trial attorneys did not adequately inform jurors about the Post-Traumatic Stress Disorder he experienced after returning home from combat in Iraq.

¹⁷ See Death Penalty Information Center for more details on these exonerations.

¹⁸ “Death row inmate gets hearing to review claims of prosecutor misconduct,” *Houston Chronicle*, February 25, 2015

Thuesen was convicted of killing his girlfriend Rachel Joiner and her brother Travis Joiner in College Station in 2009. He is among 300 veterans on death row nationwide, according to a report released in November by the Death Penalty Information Center.¹⁹ The Texas Court of Criminal Appeals is considering the ruling and will make the final decision about whether Thuesen should receive a new sentencing hearing.

- On October 28, the Texas Court of Criminal Appeals once again rejected Larry Swearingen's request for additional DNA testing of evidence he believes could exonerate him in the 1998 rape and murder of college student Melissa Trotter in Montgomery County. For the second time, the court reversed a state district judge's order granting Swearingen's request for evidence to be tested.
- On August 19, Jerry Hartfield was convicted for a second time in the 1976 slaying of 55-year-old Eunice Lowe in Bay City. His death sentence and original conviction were overturned in 1980 because of improper jury selection. He was granted a new trial, which he did not receive. Then-Governor Mark White attempted to commute Hartfield's sentence in 1983. The Texas Court of Criminal Appeals ruled, however, that he could not commute the sentence because there was no legal conviction. Hartfield spent the next 35 years in prison without a valid conviction in place.

Prosecutors did not seek another death sentence for Hartfield due to evidence of his intellectual impairments. He was found guilty of the lesser offense of murder and sentenced to life in prison. Now 59 years old, he will be eligible for parole.

Legislative Developments

During the 84th Texas Legislature, lawmakers considered numerous bills related to capital punishment. Several critical bills aimed at improving the fairness and accuracy of the criminal justice system were signed into law by Governor Greg Abbott, including bills establishing an innocence commission to examine cases of wrongful convictions, increasing access to post-conviction DNA testing, and overhauling the grand jury system.

In addition, lawmakers unanimously passed legislation requiring notice of the scheduling of an execution date and the issuance of execution warrants. Senate Bill 1071 directs convicting courts to send copies of any order scheduling an execution to the condemned person's attorney and the Office of Capital and Forensic Writs. It also specifies that copies of the death warrant must be provided to defense counsel, the Office of Capital and Forensic Writs, and the prosecution, and that an execution date may not be set earlier than the 91st day after the date the convicting court enters the scheduling order.

Legislators also passed a bill that will keep secret the identity of any person or entity providing the drugs used in Texas executions. Senate Bill 1697 makes confidential for the purposes of the Texas Public Information Act any identifying information of persons or entities who come into contact with the compound administered for executions, whether transporting, testing,

¹⁹ See "Battle Scars: Military Veterans and the Death Penalty": <http://www.deathpenaltyinfo.org/veterans>.

procuring, supplying, administering, compounding, or manufacturing the substance. It passed by a vote of 23 to 8 in the Senate and 99 to 45 in the House. The legislation became effective on September 1, 2015.

Another bill, House Bill 1587, sought to require disclosure of specific information regarding each substance to be used in an execution, including the name of the substance; the manufacturer; the expiration date; the results of any tests performed; the quantity of the substance; and any other information in the Texas Department of Criminal Justice's possession at the time. It was heard by the House Corrections Committee and left pending.

In April, the Texas House Criminal Jurisprudence Committee heard testimony on House Bill 1527, a death penalty abolition bill filed by State Representative Jessica Farrar (House District 148-Houston). Rep. Farrar has sponsored death penalty repeal legislation in every session since 2007. This bill strikes the death penalty as a sentencing option from all relevant sections of the Texas Penal Code and Code of Criminal Procedure and replaces it with life in prison without the possibility of parole. For the first time this year, an abolition bill also was filed in the Texas Senate – Senate Bill 1661 by State Senator Eddie Lucio, Jr. (Senate District 27–Brownsville).

HB 1527 was left pending in the House Criminal Jurisprudence Committee. SB 1661 was referred to the Senate Criminal Justice Committee; it did not receive a hearing.

On the national level, legislators in Nebraska abolished the death penalty in May 2015. Senators successfully overrode Governor Pete Rickett's veto of LB 268, a bill that replaces the death penalty with life without the possibility of parole. Nebraska is the first conservative state to abolish the death penalty in more than 40 years. There are now 19 U.S. states without the death penalty, and another 7 that have not carried out an execution in at least 10 years.

U.S. Supreme Court Developments

On June 29, 2015, the U.S. Supreme Court ruled 5-4 in *Glossip v. Gross* that Oklahoma's use of the drug midazolam in its lethal injection protocol does not violate the Eighth Amendment of the U.S. Constitution. Justice Stephen Breyer, joined by Justice Ruth Bader Ginsburg, dissented, declaring "that the death penalty, in and of itself, now likely constitutes a legally prohibited 'cruel and unusual punishment[t],' " and he asked for a full briefing on this Constitutional question. The two Justices noted that race, gender, and geography often impact the application of the death penalty, rather than the circumstances of the crime itself. Their dissenting opinion specifically noted declining use of the death penalty in Texas, calling the trend towards fewer death sentences a "remarkable shift."

Public Opinion

According to the 33rd Kinder Institute Houston Area Survey, 69 percent of Houstonians support life in prison without the possibility of parole or another alternative over the death penalty for people convicted of first-degree murder. The survey, conducted by the Kinder Institute for Urban Research at Rice University and published in April, finds "a gradual and continuing drop in support for the death penalty across the years."

New Voices

Texas Faith Leaders

On March 9, 2015, TCADP released an Interfaith Statement of Opposition to the Death Penalty, endorsed by more than 550 religious and spiritual leaders statewide. Among them, the signatories represent 25 different faith traditions, including Baptist, Buddhist, Catholic, Episcopalian, Lutheran, Presbyterian, Reform Judaism, and United Church of Christ. More than 20 Jewish leaders in Texas endorsed an accompanying Texas Rabbis' and Cantors' Statement of Opposition to the Death Penalty.

Signatories on the Interfaith Statement include all active and retired Bishops of The United Methodist Church in Texas and 265 United Methodist ministers from across the state.²⁰

State Senator Eddie Lucio, Jr.

During the 84th Texas Legislative Session earlier this year, State Senator Eddie Lucio, Jr. filed the first bill to abolish the death penalty in the history of the Texas Senate. Senator Lucio, who describes himself as a "pro-lifetime legislator," represents Senate District 27, which covers five South Texas counties, including Hidalgo and Cameron. In 2005, he successfully passed legislation that provides life in prison without the possibility of parole as a sentencing option for capital murder convictions in Texas.

Conclusion

Over the last 15 years, use of the death penalty has dropped significantly in Texas, mirroring national trends. Texas has gone from a peak of 48 new death sentences to the fewest death sentences on record. Executions have declined, as well.

The death penalty remains racially biased and geographically isolated, as the number of Texas counties devoting resources to costly death penalty trials dwindles each year. The risk of wrongful convictions and evidence of wrongful executions continue to undermine the fairness and accuracy of the system. The cases of individuals scheduled for execution this year also illustrate the deep flaws that plague our state's capital punishment system.

TCADP urges concerned citizens and elected officials at the state and county levels to confront the realities of this irreversible punishment and reconsider the efficacy and cost of the death penalty as a means of achieving justice.

²⁰ The text of the statement and full list of signatories is available at <http://tcadp.org/wp-content/uploads/2015/04/Final-Interfaith-Statement-of-Opposition-with-signatures-edited-3-25-15.pdf>.

Appendix A: New Death Sentences in 2015

Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
Gonzalez	Mark	1970	M	Hispanic	Pending	Bexar	5/28/2011
Calvert	James	12/03/1970	M	White	10/16/2015	Smith	10/31/2012
Hall	Paul	02/18/1993	M	Asian	10/09/2015	Brazos	10/20/2011

Source: Texas Department of Criminal Justice and San Antonio Express-News

Appendix B: Executions in 2015

Execution	Last Name	First Name	Age	Date	Race	County
531	Holiday	Raphael	36	11/18/2015	Black	Madison
530	Escamilla	Licho	33	10/14/2015	Hispanic	Dallas
529	Garcia	Juan	35	10/6/2015	Hispanic	Harris
528	Lopez	Daniel	27	08/12/2015	Hispanic	Nueces
527	Russeau	Gregory	46	06/18/2015	Black	Smith
526	Bower	Lester	67	06/03/2015	White	Grayson
525	Charles	Derrick	32	05/12/2015	Black	Harris
524	Garza	Manuel	34	04/15/2015	Hispanic	Bexar
523	Sprouse	Kent	42	04/09/2015	White	Ellis
522	Vasquez	Manuel	46	03/12/2015	Hispanic	Bexar
521	Newbury	Donald	53	02/04/2015	White	Dallas
520	Ladd	Robert	57	01/29/2015	Black	Smith
519	Prieto	Arnold	42	01/21/2015	Hispanic	Bexar

Source: Texas Department of Criminal Justice