

# Texas Death Penalty Developments in 2013: The Year in Review

A Report by the Texas Coalition to Abolish the Death Penalty



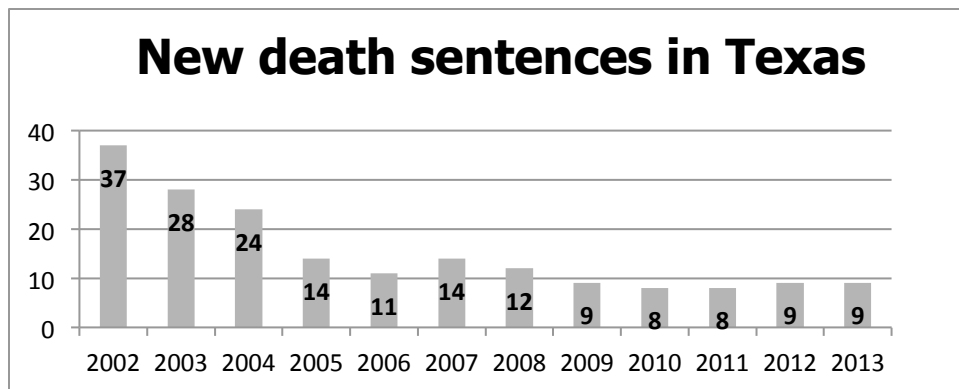
## Texas Death Penalty Developments in 2013: The Year in Review

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; U.S. Supreme Court developments; legislative developments; and other issues affecting the criminal justice system in the nation's most active death penalty state. The report is available online at [www.tcadp.org/TexasDeathPenaltyDevelopments2013.pdf](http://www.tcadp.org/TexasDeathPenaltyDevelopments2013.pdf).

### **Death Sentences**

#### *New Death Sentences*

New death sentences in Texas have dropped more than 75% since 2002 and remained near historic low levels in 2013. According to data compiled from news sources and the Texas Department of Criminal Justice (TDCJ), juries condemned nine new individuals to death in Texas this year.<sup>1</sup> This matches the total in 2012 and represents a slight increase over 2011 and 2010, when new death sentences fell to their lowest number since the U.S. Supreme Court upheld Texas' revised death penalty statute in 1976.



For the first time in six years, no one was re-sentenced to death in Texas. See *Reduced Sentences* below for details on long-standing cases that were resolved with sentences other than the death penalty.

#### *Death Sentences by County*

One-third of this year's death sentences were imposed in Dallas County. A total of seven counties accounted for the new death row inmates in 2013: Brazoria (1); Dallas (3); Harris (1); Hays (1); Hunt (1); Jefferson (1); McLennan (1).<sup>2</sup>

It was the first new death sentence in Hunt County since 2007 and the first out of Jefferson County since 2004, according to research by TCADP. Jefferson County was "once known as the source of the most death row inmates per capita," according to the *Beaumont Enterprise*.<sup>3</sup>

<sup>1</sup> At the time of publication, there were two pending death penalty cases in El Paso County, both at various stages in the jury selection process: Christian Martinez and Fidencio Valdez. Both trials are expected to begin in 2014.

<sup>2</sup> The trial of Bartholomew Granger was moved from Jefferson to Galveston County, while the trial of Albert Love, Jr. took place in Williamson County (see below for details).

<sup>3</sup> "The number of SE Texas prisoners on Death Row could increase dramatically," *Beaumont Enterprise*, August 14, 2012.

The death sentence imposed on James Harris, Jr. on December 11, 2013 was the first in Brazoria County since 1998, according to research by TCADP. He pled guilty to murdering Alton Wilcox in 2012. In 2010, a Brazoria County jury rejected the death penalty for Nicholas-Michael Edwin Jean and instead sentenced him to life in prison without the possibility of parole for the murder of Susana Puente De Jesus. See *Jury Rejections* below for more information.

An analysis of data from 2008 to 2013 reveals that only 26 Texas counties have imposed death sentences over the last 6 years; of these, only 12 counties have done so in the last 2 years.

Dallas County alone accounts for 20% of new death sentences since 2008. Out of a total 55 death sentences imposed in this time period, Dallas County leads with 11, followed by Harris and Tarrant Counties with 6 new sentences each, and Travis and Brazos Counties, with 3 new sentences each. These five counties account for more than half of new death sentences since 2008. The other 21 counties imposed 1-2 sentences each. Altogether, these 26 counties represent just 10% of the 254 counties in Texas.

Notably, three of the highest sentencing jurisdictions in recent years – Brazos, Tarrant, and Travis Counties – did not impose any death sentences in 2013. In February, jurors rejected the death penalty in a capital trial in Brazos County. See *Jury Rejections* below for details.

<b>Texas' Highest Sentencing Counties 2008-2013</b>								
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Total 2008-2013</b>	<b>Total Since 1976</b>
<b>Dallas</b>	3	1	2	0	2	3	11	106
<b>Harris</b>	0	0	2	3	0	1	6	290
<b>Tarrant</b>	2	1	0	1	2	0	6	72
<b>Travis</b>	0	1	1	1	0	0	3	19
<b>Brazos</b>	0	1	1	0	1	0	3	15
<b>Total Top 5 Counties</b>	5	4	6	5	5	4	29	503
<b>Total All Counties</b>	12	9	8	8	9	9	55	1,076

View maps of new death sentences by county from 2008 to 2013 and from 1976 to 2013 at <http://tcadp.org/2008-2013-new-death-sentences/>.

Two of the individuals sentenced to death this year were convicted of murders that occurred decades ago:

- On June 13, 2013, a jury determined that Willie Roy Jenkins should be put to death for the 1975 murder of Sheryl Ann Norris in San Marcos. The murder of Ms. Norris had gone unsolved until 2010, when police connected Jenkins to the crime using DNA evidence. He was incarcerated in California at the time and extradited to Texas to stand trial. The jury's verdict represents the first new death sentence in Hays County in 20 years.
- On July 19, 2013, the jury in the capital murder trial of Obel Cruz-Garcia determined that he should be put to death for kidnapping and killing six-year old Angelo Garcia, Jr., in Houston in 1992. It was the first death sentence in Harris County since 2011.

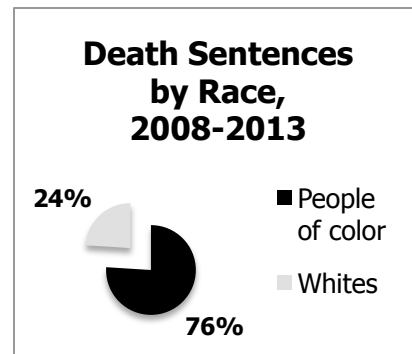
Another trial led to the second death sentence out of McLennan County in the last two years for the same crime:

- On July 16, 2013, the jury in the capital murder trial of Albert Love, Jr., sentenced him to death for the 2011 murders of Kennan Hubert, 20, and Tyler Sneed, 17, in Waco. Love is the second of two men convicted in the shooting deaths. Last year, a McLennan County jury sentenced Ricky Cummings to death for his role in the shooting; media coverage of Cummings' trial caused Love's trial to be moved to Williamson County. A third defendant, Darvis Cummings, Ricky Cummings' brother, also has been charged with capital murder for these shootings; his trial has not yet begun.

#### *Death Sentences by Race*

Seven of the new death row inmates in 2013 are African-American, one is Hispanic, and one is white. All are male. Over the last six years, half of all new death sentences in Texas have been imposed on African-Americans. In the two highest sentencing counties overall, these patterns are even more pronounced:

- Of the 11 men sentenced to death in Dallas County since 2008, 8 are African-American and 2 are Hispanic.
- In Harris County, 12 of the last 14 defendants sentenced to death are African-American and the other 2 are Hispanic. The last death sentence imposed on a white defendant in Harris County occurred in November 2004, when serial killer Anthony Shore was sent to death row.



While African-Americans comprise only 12% of the population of Texas, they comprise 40.7% of death row inmates, according to TDCJ.<sup>4</sup> Hispanics comprise 28.7% of the death row population, and whites comprise 29.1%.

<b>New Death Sentences 2008-2013, Race of Defendant</b>							
	2008	2009	2010	2011	2012	2013	Total Sentences by Race
African-American	3	3	4	4	7	7	28
Hispanic	6	3	1	2	1	1	14
White	3	3	3	2	1	1	13
Total People of Color	9	6	5	6	8	<b>8</b>	<b>42</b>
Total Sentences	12	9	8	8	9	9	55

As of December 17, 2013, TDCJ counted 275 death row inmates, which includes 9 women.<sup>5</sup> This is the lowest the Texas death row population has been since at least 1989, according to research by TCADP. Over one-third of these inmates were convicted in Harris County.<sup>6</sup> Texas holds the third-largest death row population in the nation, after California (747) and Florida (403). See Appendix A for a list of new death row inmates in Texas.

<sup>4</sup> See <http://quickfacts.census.gov/qfd/states/48000.html> and [http://www.tdcj.state.tx.us/death\\_row/dr\\_gender\\_racial\\_stats.html](http://www.tdcj.state.tx.us/death_row/dr_gender_racial_stats.html) for more information.

<sup>5</sup> Cathy Henderson still appears on this list, even though her conviction was overturned in 2012. The Travis County District Attorney's Office announced earlier this year that it would not seek another death sentence during her re-trial. See *Other Case Developments* below for more details.

<sup>6</sup> TDCJ counted 98 inmates from Harris County as of December 17, 2013.

### *Jury Rejections*

Jurors rejected the death penalty during the punishment phase in two capital murder trials in 2013, resulting in sentences of life in prison without the possibility of parole. In both cases, which involved African-American defendants, the jury determined that mitigating evidence warranted a sentence other than death, the second question on the jury instructions. Over the last six years, death-qualified juries have rejected the death penalty in more than 20 capital murder trials. Five of these rejections occurred in cases that were tried in or originated in Bexar County. Bexar County, which has sentenced the third highest number of people to death in Texas since 1976, has not imposed any new death sentences since 2009.

- On February 27, 2013, after more than 21 hours of deliberation, a Brazos County jury determined that Stanley Wayne Robertson should spend the rest of his life in prison for the 2010 murder of Annie Mae Toliver. The jury decided that there was mitigating evidence in his case that warranted a life sentence rather than the death penalty. During the punishment phase of his trial, Robertson's attorneys presented evidence of his impoverished childhood, as well as expert testimony as to his intellectual disabilities. Brazos County has sentenced three people to death since 2009.
- On July 11, 2013, an Austin County jury determined that Maron Thomas should spend the rest of his life in prison for the 2010 capital murders of his brother and sister, Cedric Thomas and Kiana Phearse, in Buckhorn. The District Attorney's office had sought the death penalty for Thomas – its first death penalty case in 25 years – but the jury decided that there was mitigating evidence in his case that warranted a life sentence. This was the first of three indictments against Thomas, who pled not guilty by reason of insanity. He has also been charged with killing his mother and stepfather, Debra and George Washington, and his two-year old niece, Khalilah Chambers-Massey.

### **Executions**

The State of Texas carried out 16 executions in 2013, a slight increase from 2012, when 15 executions took place. It accounted for 41% of U.S. executions, and twice as many as any other state.<sup>7</sup> Texas has executed a total of 508 people since 1982; 269 executions have occurred during the administration of Texas Governor Rick Perry (2001 - present), more than any other governor in U.S. history.

Some executions involved decades-old cases while others resulted from cases that were tried within the last 10 years. The last person executed in 2013 was Jerry Martin, who was sentenced to death four years ago for the 2007 murder of Texas Department of Criminal Justice prison guard Susan Canfield during a prison escape from the Wynne Unit in Huntsville. Earlier in the year, Martin waived his right to further appeal his case.<sup>8</sup>

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<sup>7</sup> In 2012, Texas accounted for 35% of U.S. executions. In 2011, it accounted for 30% of U.S. executions. From 2005 to 2009, Texas accounted for 45-62% of all executions nationwide.

<sup>8</sup> The capital murder trial of Martin's co-defendant, John Ray Falk, Jr. was declared a mistrial by a state district judge on January 28, 2013, after a 55-day delay. The trial, which had been moved from Walker County to Brazos County, came to a halt in December 2012 as the result of a legal dispute over jury instructions.

### *Executions by Race and Gender*

Of the 16 people executed in Texas in 2013, eight were African-American, five were white, and three were Hispanic.

On June 26, 2013, the State of Texas put Kimberly McCarthy to death for the 1997 murder of Dorothy Booth in Dallas County. McCarthy, who was African-American, was the fourth woman and the 500th person to be executed in Texas since 1982. She was the first female to be executed in Texas since 2005.

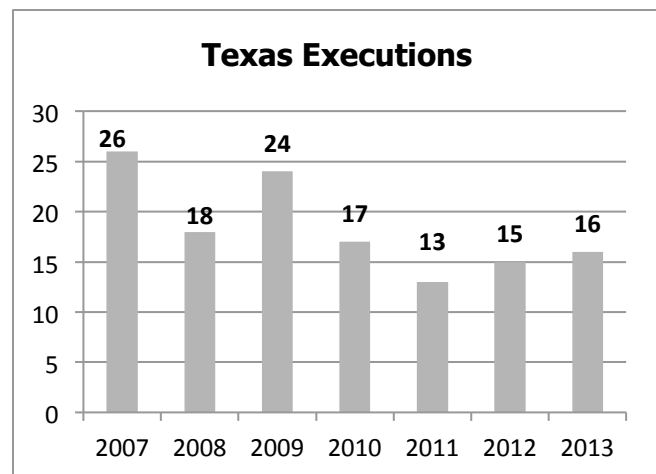
McCarthy's attorney argued that the jury selection process in her second trial was tainted by racial discrimination: of the twelve jurors seated at trial, all were white, except one, and eligible non-white jurors were excluded from serving by the State. While two earlier execution dates in 2013 were postponed, the courts refused to intervene in McCarthy's case a third time.

Of the 508 executions in Texas, 226 have involved white inmates, 189 African-Americans, 89 Hispanics, and 4 inmates with another racial identity. Collectively, 358 of these cases involved white victims, 77 involved Hispanic victims, and 68 involved African-American victims. According to the Death Penalty Information Center, 108 cases involved African-American defendants convicted of killing white victims, while just four cases involved white defendants convicted of killing African-American victims.

### *Executions by County*

Four counties accounted for half of the executions in 2013: Dallas, Harris, Hidalgo, and Lubbock Counties each accounted for two executions. Other counties of conviction for the executed inmates were: Brazos; Cherokee; Jefferson; McLennan; Navarro; Smith; Victoria; and Walker.<sup>9</sup>

According to a report issued in October by the Death Penalty Information Center, "The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All," 9 of the 15 top executing counties nationwide over the last 36 years are in Texas.<sup>10</sup> Harris County alone accounts for 119 executions, more than any state except Texas.



### *Lethal Injection Developments*

In September, officials with the Texas Department of Criminal Justice (TDCJ) announced that although their current supply of pentobarbital had expired, they had no plans to change the lethal injection protocol. At the time, officials did not disclose the source of the drugs they are now using in executions in Texas.

<sup>9</sup> The trial of Jerry Martin was moved from Walker to Leon County, where he was convicted.

<sup>10</sup> The nine Texas counties are (in order): Harris; Dallas; Tarrant; Bexar; Montgomery; Jefferson; Brazos; Nueces; and Potter. See <http://deathpenaltyinfo.org/twopercent> for details.



Attorneys for three death row inmates, including Michael Yowell, filed a civil rights lawsuit in federal court seeking full disclosure from TDCJ as to the source and nature of the drugs they plan to use in future executions. It then came to light that TDCJ obtained pentobarbital from a local compounding pharmacy, The Woodlands Compounding Pharmacy, which demanded its return in the wake of negative publicity. On October 9, after the courts refused to intervene, Yowell became the first Texas inmate put to death using compounded drugs. In his case, TDCJ did not reveal information about the drug it intended to use until one week before his scheduled execution date. It refused to return the drugs to the compounding pharmacy.

<b>U.S. Executions in 2013</b>	
<b>Texas</b>	<b>16</b>
Florida	7
Oklahoma	6
Ohio	3
Arizona	2
Missouri	2
Alabama	1
Georgia	1
Virginia	1
<b>Total</b>	<b>39</b>

On December 9, a federal judge dismissed the lawsuit of the other two plaintiffs, Thomas Whitaker and Perry Williams, ruling that their challenge to the use of compounded drugs was premature as neither has an execution date.<sup>11</sup> Attorneys are continuing to explore ways to hold TDCJ accountable for the manner in which it executes Texas prisoners, as its supply of compounded drugs is extremely limited.

Eight executions have been scheduled already for 2014, including four cases out of Harris County. See Appendix B for a list of individuals executed in 2013.

### **Stays of Execution/Dates Withdrawn**

Seven inmates scheduled for execution in 2013 received reprieves, including stays granted by the courts and the withdrawal of execution dates. Four other inmates were granted modifications of their dates but were ultimately executed in 2013.<sup>12</sup>

- On January 30, 2013, State District Judge Kelly Case withdrew the February 27 execution date of Larry Swearingen in order to give his attorneys more time to pursue DNA testing. Swearingen was convicted of the 1998 rape and murder of 19-year-old Melissa Trotter, a student at Montgomery Community College. Her body was discovered in the Sam Houston National Forest on January 2, 1999, nearly a month after she disappeared from campus. Prosecutors originally theorized that Trotter had been dead for 25 days when her body was found, but further examinations by pathologists suggest this timeframe is impossible based on the preservation of her body. Swearingen was in police custody on unrelated charges for the three weeks preceding the discovery of Trotter's body and has maintained his innocence of her murder.

This was the fourth stay of execution for Swearingen in recent years. In 2011, the Texas Court of Criminal Appeals stayed his execution and later ordered a hearing to consider the forensic evidence. According to the *Austin Chronicle*, on December 4, 2013, the court heard arguments in an appeal from Montgomery County prosecutors seeking to bar Swearingen from being allowed to conduct DNA testing on several pieces of physical evidence that have not yet been scientifically vetted.<sup>13</sup>

<sup>11</sup> "Death-Row Challenge Is Premature, Judge Rules," *Courthouse News Service*, December 9, 2013.

<sup>12</sup> Those inmates are: Kimberly McCarthy, whose execution was rescheduled twice before she was put to death in June; Rickey Lewis; Elroy Chester; and John Quintanilla.

<sup>13</sup> "Death Watch: Two death row cases go before courts," *Austin Chronicle*, December 11, 2013.

- The February 20 execution date for Britt Ripkowski was withdrawn due to a finding of incompetence to be executed. He was sentenced to death in Harris County for the 1997 murder of two-year-old Dominique Frome.
- After modifying it twice, a district court judge in El Paso withdrew the execution date for Rigoberto ("Robert") Avila, Jr., to give his attorneys an opportunity to litigate scientific evidence relevant to his case.<sup>14</sup> Avila was convicted in 2001 of having caused the death of 19-month-old Nicolas Macias the previous year. The experts who testified at Avila's trial about the likely cause of Nicolas's death did not employ biomechanical analysis, now routinely used in determining the cause of such infant deaths. In Avila's case, biomechanical analysis provides an explanation for Nicolas's death that supports Avila's consistent claim of innocence.

In September, Avila's attorneys sought an opportunity to develop and present this scientific evidence, asking the Texas Court of Criminal Appeals to order a hearing under a groundbreaking new Texas law, Senate Bill 344. SB 344, which took effect on September 1, allows greater access to the courts in cases where changes in scientific evidence call earlier verdicts into question. Read more in *Legislative Developments* below.

- State lawyers agreed to a 60-day reprieve for Robert Pruett, who was scheduled for execution on May 21, after his attorneys filed a request for DNA testing, arguing it may prove his innocence in the 1999 stabbing of prison correctional officer Daniel Nagle. The focus of the DNA test is a palm print found on a disciplinary write-up that was torn up and spread near Officer Nagle's body. A state district judge formally withdrew the May 21 execution date and scheduled a hearing regarding the DNA testing. Further DNA testing is now pending.
- The October 29 execution date of Arthur Brown was withdrawn to allow for additional testing on the firearms used in the 1992 drug-related killings of Jose Tovar, Jessica Quinones, Audrey Brown, and Frank Farias in Houston. According to the *Austin Chronicle*, "at Brown's trial Houston PD ballistics expert Charles Anderson testified, unequivocally, that slugs pulled from the victims positively matched two guns – a Smith & Wesson .357 Magnum and a Charter Arms .38..." that law enforcement connected to Brown and his co-defendant, Marion Dudley.<sup>15</sup> That testimony is now in dispute. Attorneys for Brown sought the additional testing under the provisions of Senate Bill 344, to which prosecutors have agreed. See *Legislative Developments* below for more information.

The scheduled executions of Michael Gonzales (Ector County) and Larry Hatten (Nueces County) also were halted. A comparable number of reprieves have been granted in recent years.

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<sup>14</sup> His first execution date of December 12, 2012 also was withdrawn.

<sup>15</sup> "Death Watch: Execution Delayed for Evidence Review," *Austin Chronicle*, October 25, 2013.



## **Reduced Sentences/Inmates No Longer on Death Row**

Five inmates received reduced sentences in 2013, including two from Harris County.<sup>16</sup> Collectively, these five individuals spent more than 100 years on death row. In comparison, three individuals were removed in 2012 and seven inmates were removed from death row in 2011.

- In February, Charles Dean Hood resolved his capital case with a life plea. Hood was convicted of the 1989 murders of Tracie Lynn Wallace and her boyfriend, Ronald Williamson, at their home in Plano (Collin County). In 2010, the Texas Court of Criminal Appeals (CCA) ordered a new sentencing hearing after determining that jurors were not given proper instructions on how to consider mitigating evidence that Hood did not deserve the death penalty. Despite repeated attempts by his attorneys, the courts refused to grant him a new trial based on the fact that a once-secret romantic relationship had taken place between the trial judge, Verla Sue Holland, and Tom O'Connell, the former district attorney in Collin County.

Shortly before his resentencing hearing was set to begin, Hood pled guilty and received a parole-eligible life sentence, which he cannot appeal. He will not receive credit for the 23 years he spent on death row. Hood faced two execution dates during his time on death row.

- In May, Jose Garcia Briseño, whose case was used by the Texas Court of Criminal Appeals to establish a very restrictive, non-scientific definition of mental retardation (the "Briseño factors"), was resentenced to an "effective life without parole" sentence. This was the result of a plea bargain ending years of litigation.

Briseño was convicted in 1992 of the robbery and murder of Dimmit County Sheriff Ben Murray. He received a stay from the CCA on April 7, 2009, just days before his scheduled execution, to consider whether the jury was able to give proper weight to mitigating evidence of childhood deprivation, abandonment by his parents, limited intellectual functioning, alcoholism, drug abuse, and lifelong poverty. On June 9, 2010, the CCA overturned the death sentence of Jose Briseño and ordered a new punishment hearing.

- On May 22, 2013, the Texas Court of Criminal Appeals overturned the death sentence of Virgilio Maldonado, a Mexican national, and resentenced him to life in prison based on evidence of his mental retardation. In doing so, the court reconsidered an earlier ruling against Maldonado, which was based on an evidentiary hearing during which the State's expert witness, Dr. George Denkowski, testified that Maldonado was not impaired.

Dr. Denkowski's questionable methods for evaluating mental retardation have since been discredited, and in 2011, he entered into a Settlement Agreement with the Texas State Board of Examiners of Psychologists, in which his license was "reprimanded" and he agreed not to accept any future contracts to perform forensic psychological services in the evaluation of subjects for mental retardation or intellectual disability in criminal proceedings. Dr. Denkowski evaluated sixteen Texas death row inmates before he was formally reprimanded and fined \$5,500 due to complaints that he used scientifically invalid methods.<sup>17</sup>

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<sup>16</sup> Approximately 54 inmates convicted and sentenced to death in Harris County have been removed from death row.

<sup>17</sup> "Meet Dr. Death: Texas Fights To Kill Man Locked In Death Row Due To Discredited Doctor's Testimony," *Think Progress*, September 4, 2013.

Virgilio Maldonado was sentenced to death in 1997 in Harris County for the 1995 murder of Cruz Saucedo. He is the 14th person to be removed from death row in Texas in accordance with the 2002 U.S. Supreme Court decision *Atkins vs. Virginia*, which prohibits the death penalty for persons with intellectual disabilities.

- After almost 23 years on death row, Rodney Charles Rachal pled guilty to two capital murders and two aggravated robberies, agreeing to serve four stacked life sentences. Originally sentenced to death in 1992 for the 1990 capital murder of Charles Washington in Houston, Rachal had been returned to Harris County for a resentencing hearing.

On September 23, 2009, the Texas Court of Criminal Appeals granted a subsequent writ of habeas corpus on the basis that Rachal was entitled to relief because he presented significant mitigating evidence related to his moral culpability and the appropriateness of a death sentence that could not have been given full consideration by the jury. The court ordered a new sentencing hearing in 2012.<sup>18</sup>

- On December 11, 2013, the Texas Court of Criminal Appeals ordered a new sentencing hearing for Angel Galvan Rivera, who was convicted in 1986 in El Paso for the murder of Jewel Haygood in 1984. The court agreed with a state district judge's findings that he received ineffective assistance of counsel; his attorneys failed to investigate his background or present potentially mitigating evidence to the jury. Prior to the court's ruling, prosecutors in El Paso agreed to commute his sentence to life if Rivera agreed to drop claims that he was wrongly convicted. He will be eligible for parole after spending 27 years on death row.

In addition to these reduced sentences, one death row inmate died in prison in 2013. Ronnie Hyde, who was convicted in Grimes County in May 2000, died from unspecified medical conditions. He was sentenced to death for the murder of Charles Roberson.

### **Other Case Developments**

In 2013, there were significant developments on a number of death penalty cases, including one overturned conviction:

- In August, the U.S. 5th Circuit Court of Appeals ruled that Texas death row inmate Scott Panetti is competent to be executed. Panetti was convicted and sentenced to death for the 1992 murder of his in-laws, Joe and Amanda Alvarado. Kerr County District Judge Stephen Ables allowed Panetti to represent himself despite his long, documented history of paranoid schizophrenia and frequent hospitalizations pre-dating the crime. In 2007, the U.S. Supreme Court blocked his execution and found that the Texas courts failed to provide him with a proper competency hearing. At that time, the Justices also ruled that the 5th Circuit used "an improperly restrictive test" in deciding that Panetti was sane enough to be executed. The 5th Circuit, which considers cases from Texas, Louisiana, and Mississippi, has never found a death row inmate incompetent to be executed. Panetti will again appeal to the U.S. Supreme Court.
- In September, the Travis County District Attorney's Office announced that it does not intend to seek another death sentence for Cathy Lynn Henderson, who will be retried on charges of capital murder in the death of three-month-old Brandon Baugh in 1994. Henderson was

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<sup>18</sup> See <http://www.gracelaw.org/news.html> for more details on the case.

granted a new trial last year by the Texas Court of Criminal Appeals (CCA) based on scientific advances that cast doubt upon expert testimony regarding the baby's cause of death. If she is convicted, Henderson faces a sentence of life in prison. The date of her new trial has not been set. This leaves eight women on death row in Texas. Henderson was just two days away from being executed in 2007 when the CCA granted a stay and ordered an evidentiary hearing.

- A ruling by the Texas Court of Criminal Appeals on September 11, 2013 found that a state district judge did not have the statutory authority to order Steven Staley to be forcibly medicated in order to render him competent to be executed. Staley, who was convicted of the 1989 murder of Robert Read at a Fort Worth restaurant, has been on death row since 1991; he was diagnosed as a paranoid schizophrenic soon after he arrived. At times over the last few years, he has been forced to take anti-psychotic drugs against his will. Staley believes that the drugs are poisoning him. The court's ruling did not address the issue of whether there are any circumstances that allow inmates to be forcibly medicated to be executed. In May 2012, Staley received a stay of execution from the CCA.
- On October 24, 2013, the Texas Court of Criminal Appeals overturned the conviction of Manuel Velez, who was sentenced to death in Cameron County in 2008 for the murder of one-year-old Angel Gabriel Moreno. The baby was the child of Velez's girlfriend, Acela Moreno, who served five years of a ten-year sentence for her role in Gabriel's death. The court agreed with a state district judge's assessment that Velez's defense attorneys failed to present critical medical evidence of injuries the baby sustained in the weeks and months before his death – injuries that Velez could not have caused as he was working on a construction site in Tennessee at the time.

In 2012, the court threw out Velez's death sentence after determining that the jury heard misleading testimony from an expert witness regarding the circumstances of incarceration if Velez was sentenced to life in prison. The Cameron County District Attorney's office reportedly is weighing its options in deciding how to proceed with the case.

- On October 30, 2013, in a unanimous decision, the Texas Court of Criminal Appeals ruled that death row inmate Marcus Druery is entitled to a hearing to determine his mental competency to be executed. He was convicted and sentenced to death for the 2002 murder of Skyler Browne in rural Brazos County. Last year, the CCA granted a stay to Druery just days before his scheduled execution in order to consider his appeal for a hearing to determine whether his psychotic disorder renders him incompetent. The case is now remanded to Brazos County for competency proceedings.
- On November 20, 2013, a divided Texas Court of Criminal Appeals dismissed Duane Buck's appeal for a new, fair sentencing hearing free from racial bias. In 1997, at Buck's capital sentencing hearing for the murders of Debra Gardner and Kenneth Butler in Harris County, the trial prosecutor elicited testimony from a psychologist that Buck posed a future danger because he is black. The prosecutor then relied on this testimony in arguing in favor of the death penalty, and the jury sentenced him to death.

Three years after Duane Buck was sentenced to death, then-Texas Attorney General (now U.S. Senator) John Cornyn identified seven cases in which Texas relied on testimony linking race to future dangerousness, including Buck's. Recognizing the error, Cornyn promised not

to oppose new sentencing hearings for these seven defendants, and the State of Texas upheld this promise in all of the cases, except for Duane Buck's.

The U.S. Supreme Court spared Buck's life on the day of his September 2011 scheduled execution. Two U.S. Supreme Court justices agreed that Buck's death sentence requires review because "our criminal justice system should not tolerate" a death sentence "marred by racial overtones."

In the November 2013 dismissal by the Texas Court of Criminal Appeals, three of the nine appeals court judges joined in a dissent: "The record in this case reveals a chronicle of inadequate representation at every stage of the proceedings, the integrity of which is further called into question by the admission of racist and inflammatory testimony from an expert witness at the punishment stage."<sup>19</sup>

- On June 12, 2013, the Texas Court of Criminal Appeals acknowledged that former death row inmate Jerry Hartfield has been imprisoned for 33 years despite the fact that he does have a valid conviction. Hartfield's original conviction was overturned in 1980 because the jury that convicted him had been improperly selected. He was granted a new trial, though he never received one. Governor Mark White tried to commute Hartfield's sentence in 1983; however, the Texas Court of Criminal Appeals ruled that Governor White could not commute the sentence because there was no legal conviction. Hartfield has petitioned for release.

### **Wrongful Execution**

On September 27, 2013, relatives for Cameron Todd Willingham filed an amended petition with the Texas Board of Pardons and Paroles asking the state to posthumously pardon him. Willingham was executed in 2004 for the 1991 arson murder of his three daughters in Corsicana, despite compelling evidence of his innocence. Family members urged the state to conduct an investigation into Willingham's wrongful execution based on newly discovered evidence that points to possible false testimony at his trial and possible prosecutorial misconduct.

### **U.S. Supreme Court Developments**

On May 28, 2013, the U.S. Supreme Court ruled in *Trevino v. Thaler* "that a death-row inmate in Texas can make the claim of ineffective counsel for the first time in a federal habeas petition because the rules of Texas procedure made it virtually impossible for him to raise that issue during an appeal in state court." The ruling was an extension of the Court's 2012 decision in *Martinez vs. Ryan*, a case from Arizona, that if a state habeas corpus lawyer provides ineffective assistance of counsel in failing to investigate and raise a claim that trial counsel provided ineffective assistance, the federal courts in federal habeas proceedings now can consider the claim that trial counsel was ineffective.

In its 5-4 decision in *Trevino*, the Court held that "for present purposes, a distinction between 1) a State that denies permission to raise the claim on direct appeal [like Arizona] and 2) a

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<sup>19</sup> See <http://www.cca.courts.state.tx.us/OPINIONS/HTML/OPINIONINFO.ASP?OPINIONID=24847>.

State that grants permission but denies a fair, meaningful opportunity to develop the claim [like Texas] is a distinction without difference.”<sup>20</sup>

Since the 2012 *Martinez* decision, lower courts had applied the ruling to some cases, but not others. Some lower courts held that the ruling did not apply to Texas because defendants have multiple opportunities to claim their lawyers failed them.

In light of its ruling in *Trevino v. Thaler*, the U.S. Supreme Court has ordered the 5th U.S. Circuit Court of Appeals to review at least six Texas death penalty cases, including four from Harris County. One of the cases involves an inmate who was convicted in 1986. Several of these individuals came within hours of execution before the courts intervened.

### **Legislative Developments**

During the 83rd Texas Legislature Regular Session, 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 Rick Perry, including:

- Legislation requiring all available DNA evidence in capital murder cases in which the state is seeking the death penalty to be tested before trial (Senate Bill 1292).
- Senate Bill 344, which will give defendants greater access to the courts if they can provide scientific evidence that: (1) was not available to be offered by a convicted person at the convicted person's trial; or (2) contradicts scientific evidence relied on by the state at trial.
- The Michael Morton Act (Senate Bill 1611), which requires prosecutors to turn over all evidence, not just potentially exculpatory evidence, to defense lawyers. The bill aims to prevent wrongful convictions like that of Michael Morton, who spent nearly 25 years in prison for the murder of his wife before DNA evidence exonerated him in 2011. According to the *Texas Tribune*, the act is the first significant reform to Texas discovery laws since 1965. It was the first bill that Governor Perry signed into law in 2013.
- Expansion of the authority and budget of the Texas Forensic Science Commission (Senate Bill 1238).

House Bill 899, which would have likely impeded victim access to Defense Initiated Victim Outreach (DIVO) services in capital cases, passed into law after being amended. The final legislation ensures victims receive unbiased information about DIVO from the court.

The House of Representatives also passed legislation that would create an innocence commission to investigate wrongful convictions in Texas, with the aim of preventing future miscarriages of justice. House Bill 166 by State Representative Ruth McClendon (D-San Antonio) received bi-partisan support in the House on a record vote of 115 ayes, 28 nays but was left pending in the Senate Criminal Justice Committee.

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<sup>20</sup> The decision is available at [http://www.supremecourt.gov/opinions/12pdf/11-10189\\_6k47.pdf](http://www.supremecourt.gov/opinions/12pdf/11-10189_6k47.pdf).

Additionally, the House Criminal Jurisprudence Committee gave consideration to these death penalty-related bills:

- House Bill 1703, jointly authored by State Representatives Jessica Farrar (D-Houston) and Alma Allen (D-Houston), and co-authored by State Representative Lon Burnam (D-Ft. Worth). This bill would repeal the death penalty and replace it with life in prison without the possibility of parole. It received a hearing on April 29, 2013 and was left pending in the committee without further action.
- On April 16, the committee considered House Bill 2458, which seeks to prohibit the imposition of a death sentence or execution under any judgment that was sought or obtained on the basis of race. This bill was sponsored by State Representative Senfronia Thompson (D-Houston); similar legislation (HB 2614 and SB 1270) was introduced by State Representative Eric Johnson (D-Dallas) and State Senator Royce West (D-Dallas).
- A hearing on House Bill 261, relating to the joint or separate prosecution of a capital felony charged against two or more defendants, took place on April 23. State Representative Borris Miles (D-Houston) sponsored the legislation. It was left pending in the committee without further action.

On the national level, the State of Maryland abolished the death penalty in May 2013. There are now 18 U.S. states without the death penalty.

### **Other Developments**

Other developments that shed a light on the Texas death penalty system include these:

- On September 18, 2013, the American Bar Association's Texas Capital Punishment Assessment Team released the results of its more than two-year study of the fairness and accuracy of the death penalty system in Texas. The report finds that Texas is significantly out of step with better practices implemented in other states that allow the death penalty. Of particular concern to the Assessment Team is the fact that many current death row inmates have not received the benefits of recent reforms to the Texas capital punishment system, resulting in uneven treatment.

According to the 500-page report, Texas fails to rely upon scientifically reliable evidence and processes in the administration of the death penalty, and it provides the public with inadequate information to understand and evaluate death penalty cases. Analyzing Texas's laws, procedures, and practices, it recommends numerous reforms to correct shortcomings in the administration of the death penalty in Texas, including a proportionality review to ensure that the death penalty is being applied consistently across the state. The report also observes that "Texas's capital sentencing procedure is remarkably different from that of other jurisdictions" and recommends that the state abandon the use of the "future dangerousness" special issue in its instructions to capital juries.<sup>21</sup>

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<sup>21</sup> Details are available at [www.ambar.org/texas](http://www.ambar.org/texas).

- Over the summer, a number of civil rights groups<sup>22</sup> and legal ethics experts filed a complaint against Judge Edith Jones, who serves on the 5th U.S. Circuit Court of Appeals, based on racially biased and derogatory remarks she made about death row inmates in Texas during a public lecture to the Federalist Society at the University of Pennsylvania Law School earlier in the year. According to the *Austin Chronicle*, the groups alleged that Judge Jones had “violated her duty to be impartial and damaged the public’s confidence in the judiciary, in statements she made in a public lecture – including that blacks and Hispanics are more violent.”<sup>23</sup> The complaint was filed pursuant to the federal Judicial Conduct and Disability Act and is currently under review by the D.C. Circuit Court.

### **Media Developments**

In June, the *Fort Worth Star-Telegram* Editorial Board endorsed the end of the death penalty in Texas as part of an editorial about the 500th execution, “It’s time to halt executions in Texas,” (June 22, 2013).<sup>24</sup> The editorial cited moral grounds as one reason Texas should abolish the death penalty, as well as the risk of wrongful conviction and the arbitrary and discriminatory way that this punishment is imposed.

The *Star-Telegram* became the fourth major newspaper in Texas to call for an end to the ultimate punishment, joining the *Houston Chronicle*, *Dallas Morning News*, and *Austin American-Statesman* in endorsing abolition of the death penalty. These other Texas newspapers have called for a moratorium on executions: *Abilene Reporter-News*; *Bryan-College Station Eagle*; *Corpus Christi Caller-Times*; *Daily Texan*; *El Paso Times*; *Fort Worth Star-Telegram*; *Galveston Daily News*; *San Antonio Express-News*; *Texas Monthly*; *Texas Observer*; *Victoria Advocate*; and *Wichita Falls Times Record*.

### **Conclusion**

While new death sentences and executions remain near historical low levels in Texas, troubling questions persist regarding the racially disproportionate application of the death penalty: all but one of the nine new death row inmates are people of color.

The death penalty also remains geographically isolated, as the number of Texas counties devoting resources to costly death penalty trials dwindles each year. Just five counties account for 53% of new death sentences in the last six years. Dallas County alone accounted for one-third of new sentences this year.

The risk of wrongful conviction and evidence of wrongful executions also continue to cast doubt on the fairness and accuracy of the 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.

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<sup>22</sup> Those groups include the Texas Civil Rights Project, Austin NAACP, the League of United Latin American Citizens (LULAC), and the Mexican Capital Legal Assistance Program.

<sup>23</sup> “Judge Edith Jones: Blacks and Hispanics More Violent,” *Austin Chronicle*, June 4, 2013.

<sup>24</sup> The editorial is available at <http://www.star-telegram.com/2013/06/22/4956014/its-time-to-halt-executions-in.html>.



### Appendix A: New Death Sentences in 2013

Last Name	First Name	Date of Birth	Gender	Race	Date Received	County	Date of Offense
Harris, Jr.	James		M	Black		Brazoria	01/14/2012
Johnson	Matthew	09/17/1975	M	Black	12/05/2013	Dallas	05/20/2012
Davis	Franklin	01/17/1982	M	Black	11/21/2013	Dallas	09/06/2012
Cruz-Garcia	Obel	07/08/1967	M	Hispanic	11/01/2013	Harris	09/30/1992
Love, Jr.	Albert	03/21/1987	M	Black	07/25/2013	McLennan	03/28/2011
Muhammad	Naim	05/03/1979	M	Black	07/09/2013	Dallas	08/22/2011
Jenkins	Willie	07/30/1953	M	Black	06/14/2013	Hays	11/24/1975
Brown	Micah	06/07/1979	M	White	06/10/2013	Hunt	07/20/2011
Granger	Bartholomew	09/26/1970	M	Black	05/07/2013	Jefferson	03/14/2012

*Sources: Texas Department of Criminal Justice; Dallas Morning News; and The Facts*

### Appendix B: Executions in 2013

Execution	Last Name	First Name	Age	Date	Race	County
508	Martin	Jerry	43	12/03/2013	White	Leon
507	McCoskey	Jamie	49	11/12/2013	White	Harris
506	Yowell	Michael	43	10/09/2013	White	Lubbock
505	Diaz	Arturo	37	09/26/2013	Hispanic	Hidalgo
504	Garza	Robert	30	09/19/2013	Hispanic	Hidalgo
503	Feldman	Douglas	55	07/31/2013	White	Dallas
502	Ross	Vaughn	41	07/18/2013	Black	Lubbock
501	Quintanilla	John	36	07/16/2013	Hispanic	Victoria
500	McCarthy	Kimberly	52	06/26/2013	Black	Dallas
499	Chester	Elroy	43	06/12/2013	Black	Jefferson
498	Williams	Jeffrey	37	05/15/2013	Black	Harris
497	Parr	Carroll	35	05/07/2013	Black	McLennan
496	Cobb	Richard	29	04/26/2013	White	Cherokee
495	Threadgill	Ronnie	40	04/16/2013	Black	Navarro
494	Lewis	Ricky	50	04/09/2013	Black	Smith
493	Blue	Carl	48	02/21/2013	Black	Brazos

*Source: Texas Department of Criminal Justice*



Texas Coalition to Abolish the Death Penalty

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