

## THE DEATH PENALTY IN 2022: YEAR END REPORT

# PUBLIC SUPPORT FOR DEATH PENALTY AT NEAR-RECORD LOW DESPITE PERCEPTION THAT VIOLENT CRIME IS UP

## UNACCOUNTABILITY HIGHLIGHTS A YEAR OF BOTCHED EXECUTIONS

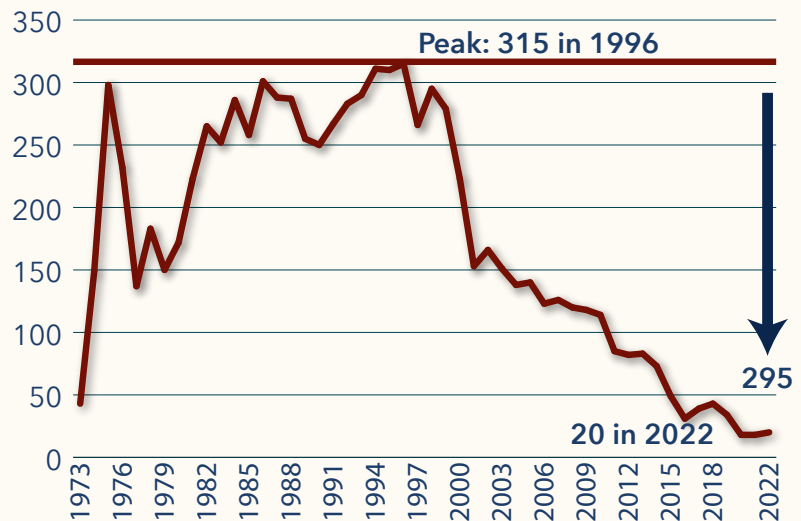
## OREGON'S GOVERNOR COMMUTES DEATH ROW

### KEY FINDINGS

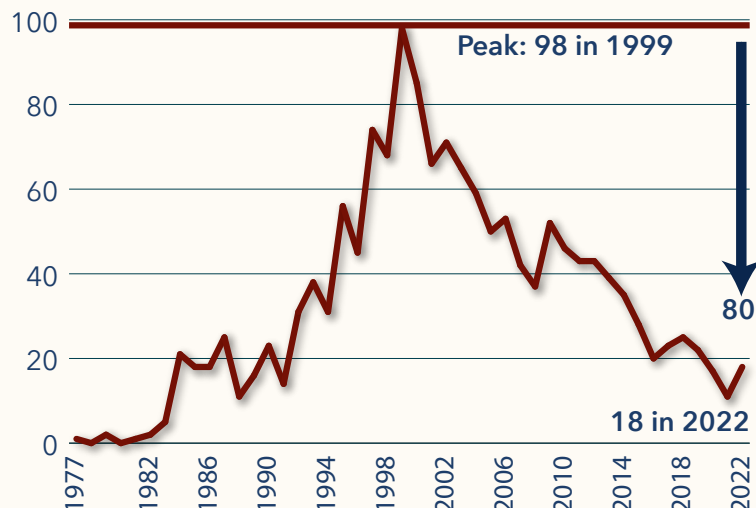
- Eighth consecutive year with fewer than 30 executions and 50 new death sentences
- Botched executions and protocol errors lead to halts in Alabama and Tennessee
- Executions heavily concentrated in few jurisdictions – more than half in Oklahoma and Texas

*Note: In March 2023, DPIC learned of one additional death sentence that was imposed in 2022: Leo Boatman, a white male defendant, was sentenced to death on November 9, 2022 in Bradford County, Florida, for the murder of Billy Chapman, a white male. Boatman's death sentence brings the total to 21. The text below does not reflect that death sentence.*

DEATH SENTENCES BY YEAR



EXECUTIONS BY YEAR



## INTRODUCTION

In a year awash with incendiary political advertising that drove the public's perception of rising crime to record highs, public support for capital punishment and jury verdicts for death remained near fifty-year lows. Defying conventional political wisdom, nearly every measure of change—from new death sentences imposed and executions conducted to public opinion polls and election results—pointed to the continuing durability of the more than 20-year sustained decline of the death penalty in the United States.

The Gallup crime survey, administered in the midst of the mid-term elections while the capital trial for the 2018 mass shooting at Marjory Stoneman Douglas High School in Florida was underway, found that support for capital punishment remained within one percentage point of the half-century lows recorded in 2020 and 2021. The 20 new death sentences imposed in 2022 are fewer than in any year before the pandemic, and just 2 higher than the record lows of the prior two years. With the exception of the pandemic years of 2020 and 2021, the 18 executions in 2022 are the fewest since 1991.

One by one, states continued their movement away from the death penalty. On December 13, 2022, Oregon Governor Kate Brown announced the commutation of the capital sentences of all 17 death-row prisoners and instructed corrections officials to begin dismantling the state's execution chamber. The commutations completed what she called the “near abolition” of the death penalty by the state legislature in 2019. Thirty-seven states—nearly three-quarters of the country—have now abolished the death penalty or not carried out an execution in more than a decade.

For the eighth consecutive year, fewer than 30 people were executed and fewer than 50 people were sentenced to death. The five-year average of new death sentences, 26.6 per year, is the lowest in 50 years. The five-year average of executions, 18.6 per year, is the lowest in more than 30 years, a 74% decline over the course of one decade. Death row declined in size for the 21<sup>st</sup> consecutive year, even before Governor Brown commuted the sentences of the 17 prisoners on Oregon's death row.

2022 could be called “The Year of the Botched Execution” because of the high number of states with failed or bungled executions. Seven of the 20 execution attempts were visibly problematic—an astonishing 35%—as a result of executioner incompetence, failures to follow protocols, or defects in the protocols themselves. On July 28, 2022, executioners in Alabama took three hours to set an IV line before putting Joe James Jr. to death, the longest botched lethal injection execution in U.S. history. Executions were put on hold in Alabama, Tennessee, Idaho, and South Carolina when the states were unable to follow execution protocols. Idaho scheduled an execution without the drugs to carry it out. One execution did not occur in

## DEATH ROW BY STATE

STATE	2022 <sup>†</sup>	2021 <sup>†</sup>
CALIFORNIA	690	699
FLORIDA	323	338
TEXAS	199	198
ALABAMA	166	171
NORTH CAROLINA	138	136
OHIO	134	130
PENNSYLVANIA	128	130
ARIZONA	116	118
NEVADA	65	66
LOUISIANA	62	65
TENNESSEE	47	49
U.S. FED. GOV'T	44	46
OKLAHOMA	42	43
GEORGIA	41	45
MISSISSIPPI	37	40
SOUTH CAROLINA	37	39
ARKANSAS	29	31
KENTUCKY	27	27
OREGON <sup>~</sup>	21	24
MISSOURI	20	21
NEBRASKA	12	12
KANSAS	9	9
IDAHO	8	8
INDIANA	8	8
UTAH	7	7
U.S. MILITARY	4	4
MONTANA	2	2
NEW HAMPSHIRE <sup>^^</sup>	1	1
SOUTH DAKOTA	1	1
VIRGINIA <sup>^</sup>	0	2
WYOMING	0	1

**TOTAL**      **2,414<sup>‡</sup>**      **2,474<sup>‡</sup>**

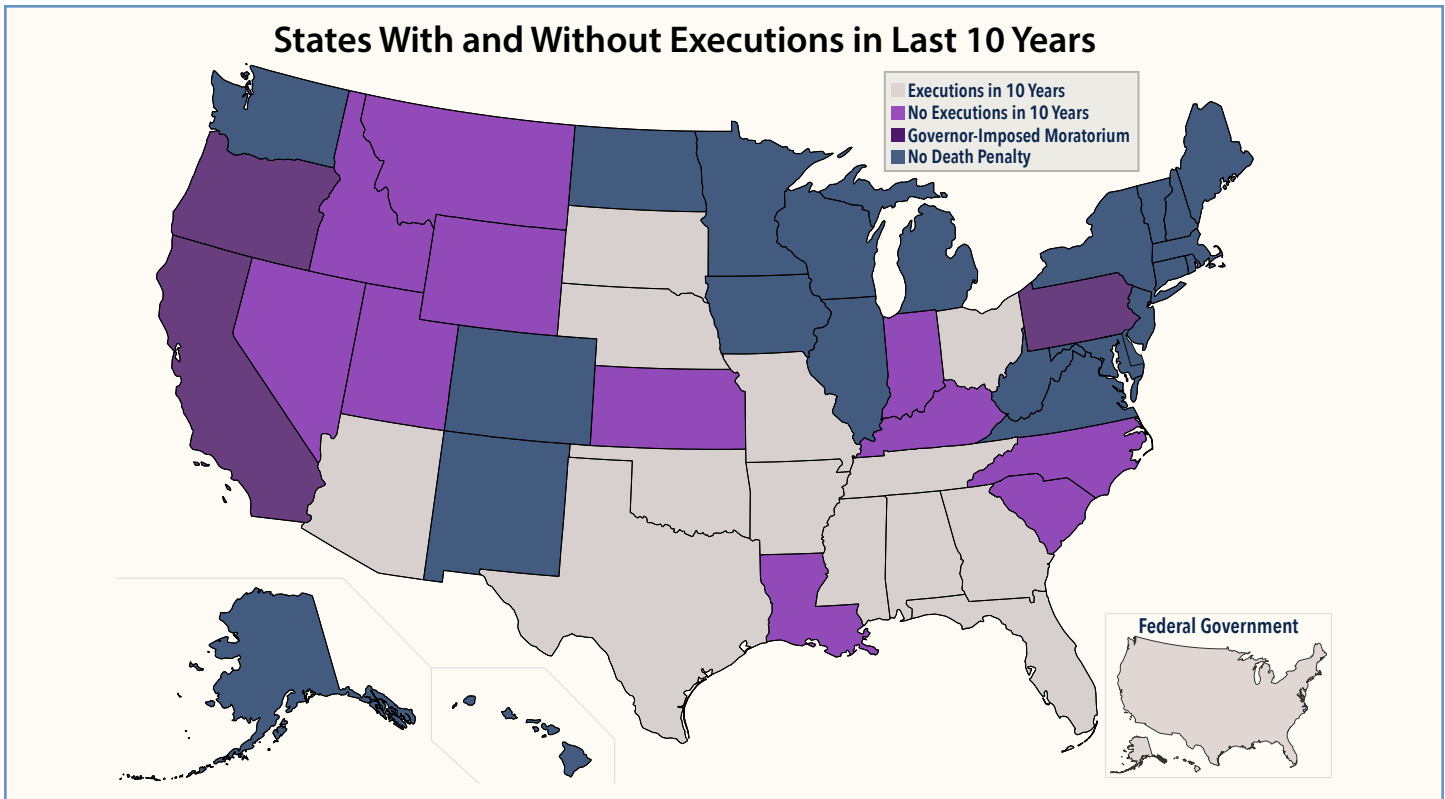
<sup>†</sup> Data from NAACP Legal Defense and Educational Fund for April 1 of the year shown

<sup>^</sup> Virginia abolished the death penalty with an effective date of July 1, 2021. The bill reduced the state's two death sentences to life without parole

<sup>^^</sup> New Hampshire prospectively abolished the death penalty May 30, 2019

<sup>~</sup> Oregon Governor Kate Brown commuted all of the state's death sentences on December 13. This shows Oregon's death row population as of April 1.

<sup>‡</sup> Persons with death sentences in multiple states are only included once



Oklahoma because the state did not have custody of the prisoner and had not made arrangements for his transfer before scheduling him to be put to death.

Although states persisted in veiling the execution process in secrecy, what reporters were able to see, and what autopsies or failed executions revealed, was shocking. Witnesses reported significant problems in all three of Arizona's executions, including the "surreal" spectacle of a possibly innocent man assisting his executioners in finding a vein in which to inject the lethal chemicals. An independent autopsy of Alabama prisoner Joe James Jr.'s body revealed what a reporter who observed those proceedings described as "carnage." The next two executions were called off while in progress because of the execution teams' inability to set IV lines. Alabama Governor Kay Ivey called for a pause in future executions and ordered an internal "top-to-bottom review" of the state's execution process.

Tennessee Governor Bill Lee stayed the execution of Oscar Smith when, shortly before it was set to occur, he learned that the execution team had failed to test the chemicals for impurities and contamination. Citing an "oversight" in execution preparations, he canceled all pending executions and commissioned a former federal prosecutor to undertake an independent review of the process.

South Carolina attempted to schedule two executions without having a complete execution protocol in place. Under state law, if lethal injection is unavailable, prisoners are forced to choose between electrocution or firing squad, but the state had no plan for firing squad executions. The state supreme court halted later scheduled executions to allow a trial court to adjudicate a challenge to the constitutionality of those methods. After a trial on the issue, the court ruled that they violated South Carolina's constitutional prohibition against "cruel, unusual, and corporal punishments."

A small number of jurisdictions that have historically been the heaviest users of capital punishment carried out a majority of executions and imposed most death sentences. Executions were concentrated in a handful of states — Oklahoma, Texas, Alabama, and Arizona — that have historically been among the most prolific executioners. But in most states and counties, cultural and political trends toward criminal legal reform and racial justice kept the death penalty out of favor, even as media and politicians escalated

fears of crime. In the midst of political rhetoric reminiscent of the peak death penalty years of the 1990s, voters selected governors in the three states with moratoria on executions. Candidates who said they would not sign death warrants won in all three. Reform prosecutors were elected or re-elected across the country: in Dallas and San Antonio, Texas; Shelby County, Tennessee; Oklahoma County, Oklahoma; and Alameda County, California; among others.

The 18 executions carried out this year raised serious concerns about the application of the death penalty and the methods used to carry it out. Among those executed this year were prisoners with serious mental illness, brain damage, intellectual disability, and strong claims of innocence. In most jurisdictions, these cases would not even be capitally prosecuted today. Two prisoners were executed over the objections of the victims' families, and two others were executed despite requests from prosecutors to withdraw their death warrants.

The arbitrariness of capital punishment was evident in sentencing decisions. Twenty people were sentenced to death in twelve states. Among those sentenced to death were at least four with significant trauma, one with brain damage, one who waived his right to counsel, and one who waived jury sentencing and asked for a death sentence. At the same time, several highly aggravated murder cases resulted in life sentences, including the 2018 mass shooting at Marjory Stoneman Douglas High School in Florida and a high-profile quadruple-murder in Ohio. The juxtaposition of those cases that resulted in death sentences and those that resulted in life without parole belies the myth that the death penalty is reserved for the “worst of the worst.”

Innocence cases attracted national attention and support from unlikely actors. A bipartisan group of Oklahoma legislators released the findings of an independent investigation into the case of Richard Glossip. Representative Kevin McDugle, a Republican and self-described supporter of capital punishment, was so convinced by the evidence of Glossip's innocence that he vowed, “If we put Richard Glossip to death I will fight in this state to abolish the death penalty simply because the process is not pure. I do believe in the death penalty, I believe it needs to be there, but the process to take someone to death has to be of the highest integrity.” The Texas case of Melissa Lucio similarly brought together a bipartisan group of legislators in support of clemency. Both Glossip and Lucio remain on death row; Glossip's execution was delayed until 2023 by Governor Kevin Stitt, while Lucio's was delayed indefinitely by a ruling from the Texas Court of Criminal Appeals.

Two people — Samuel Randolph IV in Pennsylvania and Marilyn Mulero in Illinois — were exonerated, and DPIC's research found two additional older exonerations, bringing the total to 190 people exonerated from death row since 1973. DPIC released its Death Penalty Census, which analyzed the status of more than 9,700 death sentences imposed from 1972 to January 1, 2021. The data reveal that the single most likely outcome of a death sentence imposed in the United States is that the sentence or conviction is ultimately overturned and not re-imposed. Nearly half of the sentences (49.9%) were reversed as a result of court decisions. By comparison, fewer than one in six (15.7%) death sentences ended in execution. DPIC's ongoing prosecutorial accountability project identified more than 550 trials in which capital convictions or death sentences were overturned or wrongfully convicted death-row prisoners exonerated as a result of prosecutorial misconduct — more than 5.6% of all death sentences imposed in the past fifty years.

As the United States marked 50 years of the modern death penalty system, the arbitrariness and unreliability that led the *Furman v. Georgia* court to strike down capital punishment persist. As the systemic flaws of the death penalty have become clearer and more pronounced, it is being regularly employed by just a handful of outlier jurisdictions that pursue death sentences and executions with little regard for human rights concerns, transparency, fairness, or even their own ability to successfully carry it out.

## SIGNIFICANT DEVELOPMENTS IN 2022

Death penalty developments reflected the split between the growing number of states that have abandoned the use of capital punishment in law or practice and the extreme conduct of a small number of outlier states and counties that are attempting to carry out executions. At both the state and federal level, legislators grappled with the racial injustice in the criminal legal system. Two states took action to address questions of mental health and the death penalty. Meanwhile, three states took action to avoid public oversight of executions, and a fourth undertook an unprecedented spree of executions.

### Legislation

Reform legislation passed on the state and federal level, while three states passed laws intended to expand execution secrecy and reduce public oversight of the execution process.

The **California** legislature and **U.S. Congress** took action to redress racism in the legal system. A [federal law](#), first proposed nearly a century ago, made lynching a federal crime. At the signing ceremony, President Biden drew a historical link between the murder of Emmett Till, for whom the bill was named, and the 2020 murder of Ahmaud Arbery. “Racial hate isn’t an old problem; it’s a persistent problem,” Biden said.



*President Biden signing the Emmett Till Antilynching Act*

California enacted the [Racial Justice Act for All](#), a measure that retroactively applied the state’s 2020 Racial Justice Act to prisoners already sentenced to death and others convicted of felonies. Effective January 1, 2023, the expanded law permits death-row prisoners to challenge convictions obtained or sentences imposed “on the basis of race, ethnicity, or national origin.”

**Kentucky** became the second state to pass a [serious mental illness exemption](#), barring the death penalty for people diagnosed as seriously mentally ill. Kentucky provides for a narrow exemption, requiring that a defendant had a documented diagnosis and active symptoms of mental illness at the

time of his or her offense. **Ohio** passed a somewhat broader serious mental illness exemption in 2021. On January 31, 2022, [David Sneed](#) — who faced an April 2023 execution date — became the third person removed from death row under the statute.

Voters in **Alabama** overwhelmingly approved a constitutional amendment to require the governor to provide advance notice to the attorney general and the victim’s family before granting a reprieve or commutation to any person sentenced to death. The amendment, which had no organized opposition, is expected to have little practical impact: Alabama governors have commuted only [one death sentence](#) in the past fifty years, and none since 1999.

**Idaho, Florida, and Mississippi** each passed laws designed to make it easier for the states to perform executions by reducing transparency in the execution process. New laws in Idaho and [Florida](#) will conceal

- Oregon governor commutes its entire death row
- Oklahoma schedules 25 executions over a 29-month period, seeking to put to death 58% of its death row
- Kentucky becomes second state to pass serious mental illness exemption
- Three states — Idaho, Florida, and Mississippi — expand secrecy surrounding executions



from the public the identity of producers and suppliers of execution drugs. In both states, proponents of the bills claimed, without evidence, that the measures were necessary to protect drug suppliers from intimidation or harassment. Similar unfounded claims have been made in other states to justify secrecy policies.

Idaho's bill initially failed on a tie vote in committee. Historically, that had meant that that a bill was off the table for the remainder of the legislative session. But in a controversial parliamentary decision that deviated from past legislative practice, committee chairman Sen. Todd Lakey ruled that a tie vote is a "nullity" that "decides nothing" and allowed the committee to [reconsider](#) the bill. In the first test of source secrecy after the passage of the bill, the Idaho Department of Corrections [called off](#) the scheduled December 15, 2022 execution of **Gerald Pizzuto, Jr.** saying it was unable to find any source willing to sell it execution drugs.



*Senator Todd Lakey*

Mississippi implemented a law giving [unprecedented discretion](#) to the Commissioner of Corrections in determining the method of execution. Prior to July 1, 2022, the state gave prisoners a choice of lethal injection, electrocution, firing squad, or nitrogen hypoxia. Under the new law, the Commissioner must notify a prisoner of which method will be used within seven days of an execution warrant being issued. There is no provision for transparency regarding the Commissioner's selection of the method, and the law provides no guidance on how the method should be selected.

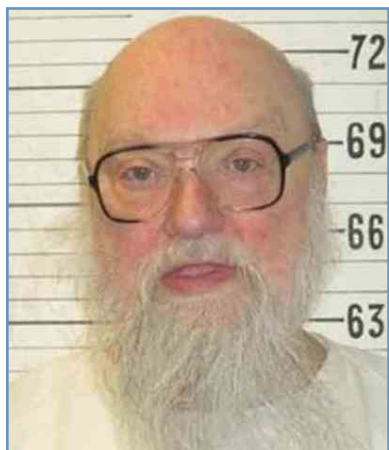
Legislators in fifteen states and U.S. Congress introduced bills to abolish the death penalty. Repeal bills received serious consideration in two states: **Utah** and Ohio. In Utah, an abolition bill sponsored by two Republican lawmakers [failed in committee](#) on a 6-5 vote. After the vote, bill sponsor Rep. V. Lowry Snow said, "This is not a matter of if, it is when the time is right, Utah will move forward." A bipartisan repeal bill in Ohio is still pending, after four hearings were held in 2021.

## Other State Developments

Outgoing **Oregon Governor Kate Brown** announced on December 13 the commutation of the death sentences of all 17 people on Oregon's death row. Governor Brown commuted the death sentences to sentences of life without parole and ordered the dismantling of the state's execution chamber.

Challenges to methods of execution remained at the forefront of death penalty litigation and controversy.

In **South Carolina**, the executions of **Brad Sigmon** and **Richard Moore** were [halted](#) in April to allow for a legal challenge to the state's execution protocols. The state had first set executions for the men by lethal injection without having a supply of drugs to carry them out, then scheduled executions by electric chair without complying with a state-law requirement that they be provided the option to die by firing squad. In Moore's legal filing, he said, "I believe this election is forcing me to choose between two unconstitutional methods of execution." In September, a South Carolina trial court [issued an injunction](#) against executions by firing squad or electric chair after hearing four days of expert testimony. Judge Jocelyn Newman found that the methods violated the state constitution's prohibition on "cruel, unusual, and corporal punishments." The South Carolina Supreme Court is scheduled to hear the appeal in the case January 5, 2023.



*Oscar Smith*

Governors in two southern states put executions on hold after serious problems in carrying out their lethal-injection protocols. **Tennessee Governor Bill Lee** [announced](#) on May 2 that he was pausing all executions scheduled for 2022 and ordering an “independent review” of the state’s execution protocol to address a “technical oversight” that led him to halt **Oscar Smith**’s execution less than a half-hour before it was scheduled to be carried out on April 21, 2022. In a series of articles published later in May, *The Tennessean* [revealed](#) mistakes and questionable conduct at every step of the lethal-injection process, from the compounding of the execution drugs by a pharmacy with a problematic safety history, to testing procedures, to the storage and handling of the drugs once they were in the possession of the Tennessee Department of Correction (TDOC).

In November, **Alabama Governor Kay Ivey** also [halted executions indefinitely](#) after the Alabama Department of Corrections (ADOC) botched three consecutive executions. ADOC personnel struggled for three hours behind a closed curtain to establish an IV line to execute **Joe James Jr.**, in the longest botched lethal-injection execution in U.S. history. ADOC called off the executions of **Alan Miller** and **Kenneth Smith** when it became clear that the execution team would not be able to set an intravenous execution line before the warrant expired. Ivey called for a “top-to-bottom review” of the execution process, but unlike Tennessee’s independent investigation, Ivey directed the Department of Corrections to investigate its own mistakes.

**Florida** became the seventh state since 2017 to address the conditions of confinement on death row. The state [ended](#) its practice of automatically incarcerating all death-sentenced prisoners in permanent solitary confinement. The Florida Department of Corrections agreed to the action as part of a settlement of a federal civil rights lawsuit brought by eight prisoners who alleged that the state’s death-row conditions were “extreme, debilitating, and inhumane, violate[d] contemporary standards of decency, and pose[d] an unreasonable risk of serious harm to the health and safety.” Five other states ended automatic prolonged solitary confinement for their death rows: [Arizona](#), [Louisiana](#), [Pennsylvania](#), [South Carolina](#), and [Virginia](#) (which subsequently abolished its death penalty). A sixth state, [Oklahoma](#), has not ended its practice of keeping death-row prisoners in solitary confinement for 23 hours a day, but has implemented some other changes, including eliminating incarceration in windowless cells, permitting contact visitation, and providing some opportunity for outside recreation.

## *Denials of Meaningful Process*

Throughout 2022, the few states that carried out executions exhibited a callous disregard for fair process and public or judicial oversight of their actions. The most notable example was Oklahoma, which [scheduled 25 executions](#) over the course of 29 months. The state court’s execution orders came two weeks after the prisoners [filed notice](#) in the U.S. Court of Appeals for the Tenth Circuit that they intended to appeal federal district Judge Stephen Friot’s ruling upholding the constitutionality of the state’s controversial execution protocol. Oklahoma began to execute prisoners before the circuit court could rule on the prisoners’ appeal. The state previously executed four prisoners while the federal trial on the drug protocol was pending. Among those slated for execution are prisoners with serious mental illness, intellectual disability, trauma, and significant claims of innocence. Oklahoma executed two seriously mentally ill prisoners without judicial review of their claims of mental incompetency and scheduled another for execution even though he was incarcerated in another jurisdiction and the state had not made arrangements for transfer of custody.



*Judge Stephen Friot*

Alabama carried out — or attempted to carry out — several executions in 2022 in violation of its own law. When the Alabama legislature authorized nitrogen hypoxia as a method of execution in 2018, it afforded prisoners a narrow 30-day window in which to designate it, rather than lethal injection, as the means by which they would be put to death. Alabama prosecutors then selected for execution prisoners whom they believed had not designated nitrogen hypoxia as the method of their execution.

However, as an Alabama federal district court and the U.S. Court of Appeals for the Eleventh Circuit found, corrections officials “[chose not to keep](#) a log or list of those inmates who submitted an election form choosing nitrogen hypoxia” and lost or misplaced the election forms submitted by some death-row prisoners. Prison guards also collected, but did not turn in, forms submitted by other prisoners. Further, when it distributed the forms, ADOC provided no explanations of the form or assistance in filling it out to prisoners with intellectual impairments. In court proceedings over potential violations of condemned prisoners’ rights, the Alabama Attorney General’s office materially misrepresented the role prison officials played in the designation process and was sanctioned for its misconduct.

Lawyers for **Matthew Reeves**, an intellectually disabled death-row prisoner, alleged that he would have opted for execution by nitrogen gas and that Alabama’s failure to offer him accommodations for his intellectual disability violated his rights under the Americans with Disabilities Act (ADA). After reviewing thousands of pages of documents and conducting a seven-hour hearing that included testimony from prison officials and a defense mental health expert, the district court concluded that Reeves had demonstrated a substantial likelihood that he would succeed on his ADA claim and issued a preliminary injunction barring the state “from executing [Reeves] by any method other than nitrogen hypoxia before his [ADA] claim can be decided on its merits.” A three-judge panel of the Eleventh Circuit unanimously affirmed the district court but in a [5-4 execution night vote](#) on January 27, the U.S. Supreme Court vacated the injunction and Reeves was executed.



*Alan Miller*

Alabama unsuccessfully attempted to execute **Alan Miller** on September 22 after he challenged the state’s authority to execute him by lethal injection. Miller alleged that he had designated execution by nitrogen hypoxia and requested a copy of the form, but Alabama prison officials said they had no record of his having submitted the form. Judge R. Austin Huffaker, Jr. of the U.S. District Court for the Middle District of Alabama found that “Miller has presented consistent, credible, and uncontroverted direct evidence that he submitted an election form in the manner he says was announced to him by the [ADOC],” along with “circumstantial evidence” that ADOC lost or

misplaced his form. Huffaker issued an injunction prohibiting the state from executing Miller by means other than nitrogen hypoxia and the Eleventh Circuit denied Alabama’s motion to vacate the district court’s ruling. In a 5-4 vote, the U.S. Supreme Court lifted the injunction and allowed the execution to proceed, but Miller’s execution was called off when the execution team was unable to set an IV line.

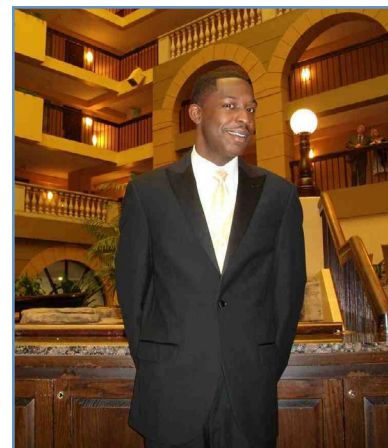
Defendants in two states brought challenges to the death-penalty jury selection process. Both argued that the combination of the “death-qualification” process — which disqualifies potential jurors from serving in a capital case because of their expressed opposition to the death penalty — and discretionary jury strikes discriminatorily disenfranchised African American jurors and produced unrepresentative juries incapable of reflecting the views of the community.

In **North Carolina**, lawyers for Wake County capital defendant **Brandon Hill** [presented](#) a study by law professors Catherine M. Grosso and Barbara O’Brien that documented statistically significant evidence of racial disparities in death-qualification. The study of eleven years of capital prosecutions in the county found that Black potential jurors were removed “at 2.16 times the rate of their white counterparts.”



Controlling for jurors who could have been excused for cause on other grounds, they found that otherwise qualified “Black venire members were removed on this basis at 2.27 times the rate of white venire members.” The prosecution’s racially disparate exercise of discretionary peremptory strikes further diluted Black representation on death penalty juries. Grosso and O’Brien found that the prosecution peremptorily “struck Black potential jurors at 2.04 times the rate it struck white venire members.” Their research showed that “[t]he cumulative effect of the death qualification process and the state’s exercise of peremptory strikes meant that Black potential jurors were removed at almost twice the rate of their representation in the population of potential jurors,” while white jurors were removed at 0.8 times their representation in the general venire.

In **Florida**, lawyers representing **Dennis Glover** in his capital resentencing trial [presented](#) research from criminal justice professor Dr. Jacinta M. Gau, who reviewed the jury selection practices in the 12 capital cases tried in Duval County (Jacksonville) from 2010 through 2018. Dr. Gau found that 33.8% of Black potential jurors were excluded by death qualification, along with 38.0% of other jurors of color, while only 15.5% of white jurors were excluded. While Black jurors comprised 25.9% of the general venire, they constituted 39.3% of those disqualified because of their views against the death penalty. Likewise, while other jurors of color (Latinx, Asian, or other race) comprised 8.9% of the overall jury pool, they constituted 15.2% of those disqualified because of opposition to capital punishment. By contrast, white jurors comprised 65.4% of the entire venire, but only 45.5% of death-qualification strikes. Again, the prosecutor’s discretionary strikes compounded the racial disparities: “fully two thirds of Black women otherwise eligible, qualified, and willing to serve were excluded by the combination of death qualification and prosecutor peremptory strikes, as were 55% of Black men,” Gau wrote.



*Brandon Hill*

## Research and Investigations

On June 29, 2022, timed to coincide with the fiftieth anniversary of the U.S. Supreme Court’s decision in *Furman v. Georgia* that ushered in the modern era of the U.S. death penalty, DPIC released our [Death Penalty Census](#), our effort to identify and document every death sentence imposed in the U.S. since *Furman*. The census captures more than 9,700 death sentences imposed between the *Furman* ruling and January 1, 2021.

The data from the census document that 49 years into the modern era, the single most likely outcome of a death sentence imposed in the United States is by far that the defendant’s conviction or death sentence will be overturned and not re-imposed. Nearly half of the death sentences imposed since 1972 (49.9%) have been reversed as a result of court decisions. The next most likely outcome (23.9%) is that the sentence is still active, and the defendant is still on death row. By comparison, fewer than one in six (15.7%) death sentences have ended in execution. 7.3% of death sentences effectively became death-in-prison life sentences, as death-row prisoners died before their sentence was carried out or while their appeals were still pending in the courts. Another 2.9% of sentences were decapitalized by executive grants of clemency.

Our analysis of the data confirmed the increasing geographic arbitrariness of the U.S. death penalty and that it is disproportionately carried out in a small number of states and counties characterized by outlier practices and lack of meaningful judicial process. Fewer than 2.4% of all counties in the U.S. (just 75 counties) accounted for half of all death sentences imposed in state courts since 1972.

Prosecutions in just five counties accounted for more than 1/5 of all executions in the U.S., while prosecutions in just 2% of U.S. counties accounted for half of all U.S. executions. 84% of U.S. counties had not had any executions in a half-century.

Just 34 counties — fewer than 1.1% of all the counties in the U.S. — accounted for half of everyone on death row in U.S. state death rows. 2% of U.S. counties accounted for 60.8% of all state death-row prisoners. 82.8% of U.S. counties did not have anyone on death row.

Outlier practices disproportionately contributed to death sentences and executions. Counties in Alabama and Florida, which authorized non-unanimous death sentences, imposed more death sentences and had higher per capita death-sentencing rates and current death-row populations than other counties of similar size. States with the highest execution rates also tended to have the worst access to meaningful judicial review. [More than 100 people](#) were executed in Texas after U.S. Supreme Court case precedent had already established the unconstitutionality of their death sentences. 36.4% of all Florida executions, or 1 in every 2.75 executions, came despite U.S. Supreme Court decisions clearly establishing the unconstitutionality of their death sentences.

Our [prosecutorial accountability project](#), the first results of which were also released on the 50<sup>th</sup> anniversary of *Furman*, found that official misconduct is rampant in death penalty cases. Our research, which is still ongoing, identified more than 550 cases in which a capital conviction or death sentence was overturned or a death-row prisoner was exonerated as a result of prosecutorial misconduct. That means that at least 5.6% of all death sentences that have been imposed in the United States since 1972 have been reversed because of prosecutorial misconduct or resulted in a misconduct-related exoneration.

An important investigation by [National Public Radio](#) shined a light on one of the less appreciated consequences of capital punishment: its debilitating impact on the prison personnel who are tasked with carrying it out. Reporter Chiara Eisner interviewed 26 current or former corrections workers and others

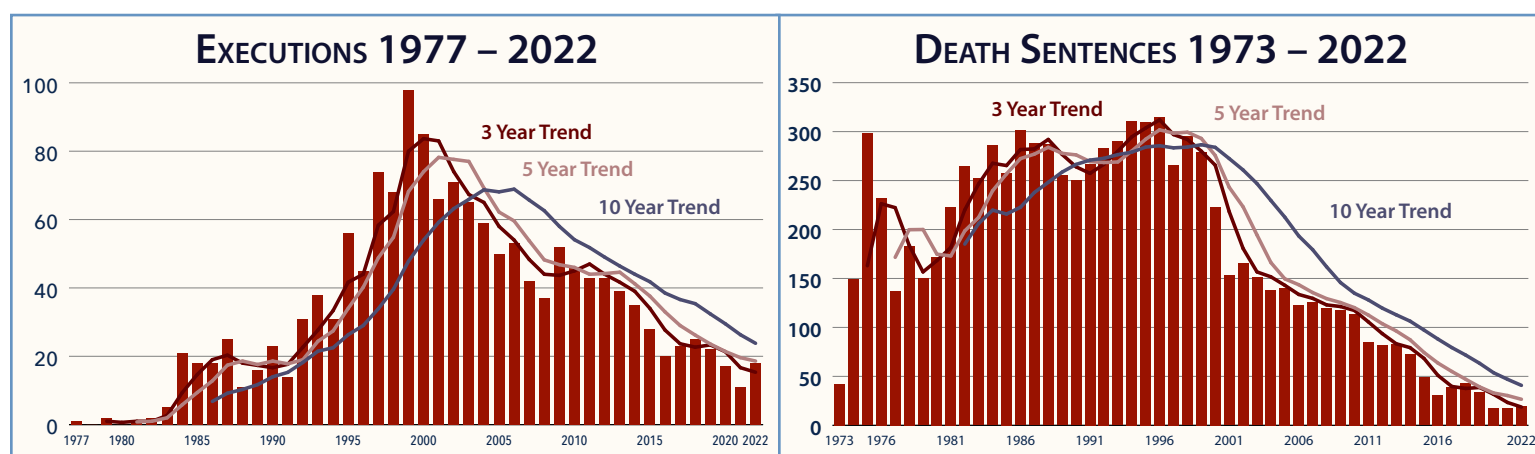
who had been involved in executions carried out by seventeen states and the federal government, finding that corrections personnel who participate in executing prisoners experience emotional trauma so profound that it often changes their views about capital punishment.

“Most of the workers NPR interviewed reported suffering serious mental and physical repercussions,” Eisner reported. “But only one person said they received any psychological support from the government to help them cope.” Of all the people whose work required them to witness executions in 13 states — Virginia, Nevada, Florida, California, Ohio, South Carolina, Arizona, Nebraska, Texas, Alabama, Oregon, South Dakota, and Indiana — none said they still support the death penalty, including those who were in favor of capital punishment when they started their jobs.



## EXECUTION AND SENTENCING TRENDS

- Eighth consecutive year with fewer than 30 executions and 50 new death sentences
- Two states—Oklahoma and Texas—performed 56% of the year's executions
- Only one county—San Bernardino, California—imposed more than a single death sentence. Two death sentences are expected to be imposed there on December 16



For the eighth consecutive year, fewer than 50 new death sentences were imposed in the United States and fewer than 30 executions were carried out. Six states carried out executions, while twelve imposed new death sentences. With the exception of the pandemic years of 2020 and 2021, the 20 new death sentences — just two above last year's record low of 18 — were the fewest imposed in any year in the U.S. in the past half-century. The 18 executions also were fewer than in any pre-pandemic year since 1991.

Death sentences and executions have both fallen dramatically from their peak usage in the 1990s. Death sentences in 2022 were 93.7% below the peak of 315 in 1996. Executions have dropped by 82% since their peak of 98 in 1999. The number of people on death row across the country also declined for the 21<sup>st</sup> consecutive year, with resentencings to life or less again outpacing the number of new death sentences. As of April 1, there were 2,414 people on death row.

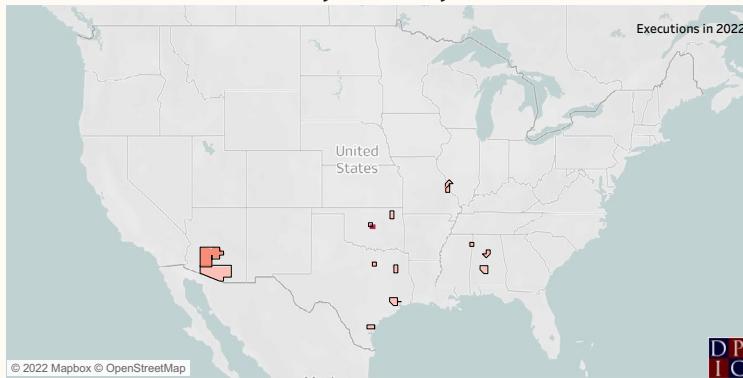
Geographically, the year's trends were a microcosm of the last 50 years of the U.S. death penalty. **Oklahoma** and **Texas** performed more executions than any other states, combining for more than half (56%) of the year's executions. Since 1976, those two states have performed about 45% of all executions in the U.S. At a county level, just 13 counties carried out executions, and just two — Oklahoma County, **Oklahoma** and Maricopa County,

### EXECUTIONS BY STATE 2022 & 2021

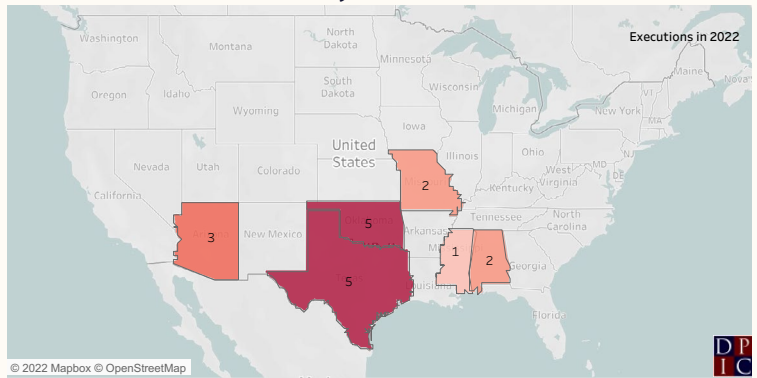
STATE	2022	2021
TEXAS	5	3
OKLAHOMA	5	2
ARIZONA	3	0
ALABAMA	2	1
MISSOURI	2	1
MISSISSIPPI	1	1
U.S. GOVERNMENT	0	3
<b>TOTAL</b>	<b>18</b>	<b>11</b>

## 2022 EXECUTIONS

By County



By State



**Arizona** — carried out more than a single execution. Both of those counties are among the 20 most prolific executing counties in the last 50 years. Thirteen (65%) of the death sentences imposed in 2022 were handed down in the five states with the largest death row populations — **California** (2 new sentences), **Florida** (4), **Texas** (2), **Alabama** (3), and **North Carolina** (2), which also are the only states to impose multiple death sentences during the year.

Oklahoma County's four executions in 2022 brought its total to 46 since 1976. It now ranks fourth in the country in the number of executions, and no county outside of Texas is responsible for more. The five most prolific executing counties (the others, all in Texas, are Harris, Dallas, Bexar, and Tarrant) have carried out more than one-fifth of all executions in the U.S. in the last fifty years.

People of color were again overrepresented among those executed in 2022, as were cases involving white victims. Eight of the 18 prisoners executed were people of color: five were Black, one was Asian, one Native American, and one Latino. Five of the eight people of color (62.5%) were executed for killing white victims (3 Black defendants, one Latino, and one Native American). Only one of the 10 white defendants (10.0%), **Benjamin Cole**, was executed for killing a person of color (Native American), and no one was executed for an interracial murder of a Black victim.

Twelve states imposed new death sentences this year. Florida sentenced more people to death than any other states, with four.

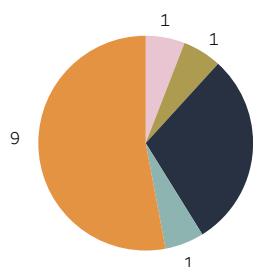
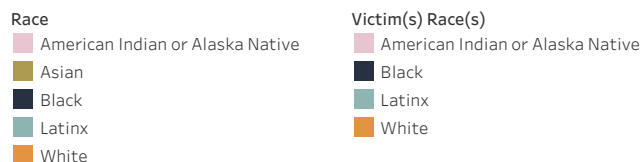
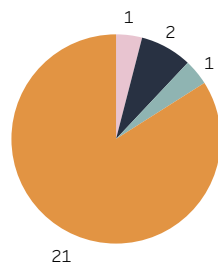
COUNTIES WITH THE MOST DEATH SENTENCES  
IN THE LAST FIVE YEARS

COUNTY	STATE	NEW DEATH SENTENCES		FIVE-YEAR TOTAL
		2018-2021	2022	
RIVERSIDE	CALIFORNIA	5	0	5
CUYAHOGA	OHIO	5	0	5
LOS ANGELES	CALIFORNIA	4	0	4
MARICOPA	ARIZONA	3	1	4
TULARE	CALIFORNIA	3	1	4
OKLAHOMA	OKLAHOMA	3	0	3
SAN BERNARDINO	CALIFORNIA	1	2	3

The overlap between executing states and sentencing states illustrates the continued geographic narrowing of death penalty use. The six states that carried out executions in 2022 imposed 41% (9) of the year's death sentences. Every state that performed an execution also imposed at least one new death sentence this year.

Just 35% of the 51 death warrants issued for 2022 were actually carried out. Ten executions were stayed for reasons including



2022 Executions by  
Race of Defendant2022 Executions by  
Race of Victim(s)

mental competency, intellectual disability, and probable innocence. Seventeen executions were halted by reprieve — 9 in **Ohio**, where executions have been on hold since 2019 over concerns about lethal injection, and 6 in **Tennessee**, where **Governor Bill Lee** halted executions this year to review the state's execution protocols. **Richard Glossip** in Oklahoma received two reprieves to allow the Oklahoma Court of Criminal Appeals to review his request for an evidentiary hearing on new evidence of innocence. One prisoner died while his death warrant was pending. One execution date was removed. Two executions, both in Alabama, failed after execution personnel were unable to set IV lines. Two other warrants

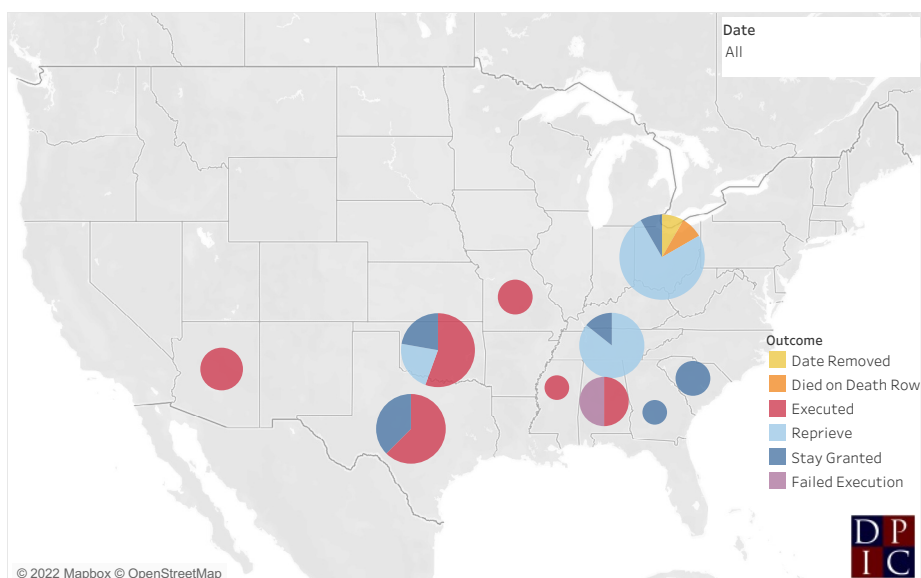
expired without being carried out because the condemned prisoner was not in custody in the state or the state had scheduled the execution without the drugs necessary to carry it out.

Oklahoma's decision to schedule 25 execution dates over a two-year period marked it as an outlier, even among states that regularly perform executions. Only three states have ever executed 25 or more people in a two-year span — Texas, Oklahoma, and **Virginia**. If Oklahoma were to carry out all 25 executions, it would execute an unprecedented 58% of its death row in that time period.

Problems with execution methods halted executions in three states, while Ohio continued to pause executions for the same reason. In **South Carolina**, the state supreme court stayed the executions of **Richard Moore** and **Brad Sigmon**, who were challenging the state's use of the electric chair and firing squad as execution alternatives to lethal injection. In court filings, Moore wrote, "I believe this election is forcing me to choose between two unconstitutional methods of execution. ... Because the Department says I must choose between firing squad or electrocution or be executed by electrocution I will elect firing squad." The state said that it had been unable to obtain lethal-injection drugs, leaving electric chair and firing squad as the available methods.

Tennessee Governor Bill Lee halted executions and ordered an independent investigation into the state's execution procedures after it was revealed that corrections officers had not

Outcome of Death Warrants in 2022



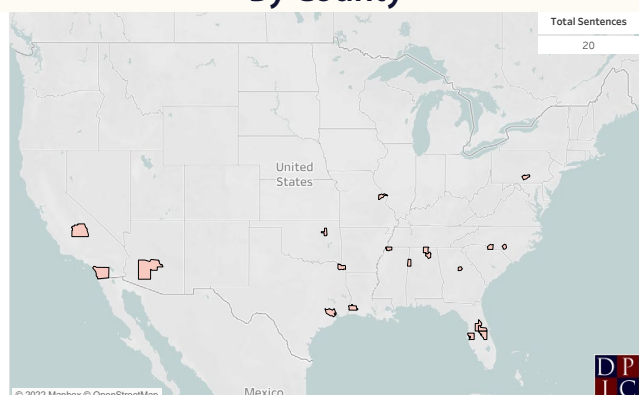
followed protocol in preparation for **Oscar Smith**'s execution on April 21. Lee called off Smith's execution less than half an hour before it was set to be carried out. Lee emphasized the importance of an independent, third-party review, appointing a former U.S. Attorney to conduct the investigation.

**Alabama Governor Kay Ivey** similarly paused executions after her state's string of botched and failed executions. In contrast to Lee, Ivey made no assurances that the "top-to-bottom review" she ordered would be performed by an independent investigator. Instead, she blamed the problems on efforts by prisoners and their attorneys to ensure that each case received thorough judicial review.

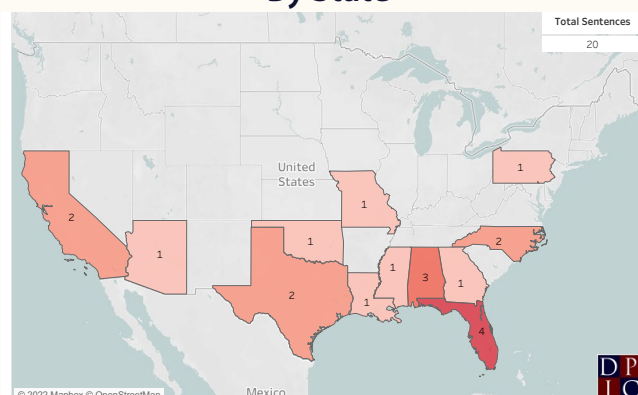
**Ohio Governor Mike DeWine** issued nine reprieves citing "ongoing problems involving the willingness of pharmaceutical suppliers to provide drugs" for use in executions "without endangering other Ohioans." Drug manufacturers had informed the governor that they would halt selling medicines to state facilities if Ohio diverted drugs that had been sold for medical use and instead used them in executions.

## 2022 DEATH SENTENCES

By County



By State



## INNOCENCE AND CLEMENCY

- 190 people have been exonerated from death row since 1973
- Concerns about innocence attracted unlikely spokespeople, including Republican state legislators and self-described supporters of capital punishment
- Exonerations and claims of innocence centered on police and prosecutorial misconduct

### *Exonerations in 2022*

Two more former death-row prisoners were exonerated in 2022, including the third woman wrongfully convicted and sentenced to death. With DPIC's ongoing research discovering two additional unrecorded exonerations, the number of U.S. death-row exonerations since 1973 rose to 190.

DPIC's analysis of data from the National Registry of Exonerations also found that at least twelve innocent people were exonerated in 2021 from wrongful murder convictions that involved the wrongful pursuit or threatened use of the death penalty by police or prosecutors.

**Samuel Randolph IV** was [exonerated](#) in April 2022 after being wrongfully incarcerated for 20 years. Randolph is **Pennsylvania's** 11<sup>th</sup> death-row exoneree, with five of those exonerations occurring since 2019. All five of those exonerations have involved both official misconduct and perjury or false accusation. Four of the five have also involved inadequate legal representation at trial.

Randolph was sentenced to death in 2003 for the murders of two men in a Harrisburg bar in 2001. He had long maintained his innocence, alleging that police and prosecutors withheld exculpatory evidence in the case and selectively refused to test DNA evidence that could exclude him as the killer. He was represented at trial by a lawyer who, while running for district attorney in a neighboring county, had failed to investigate Randolph's case. After a complete breakdown in communications between Randolph and appointed counsel, his family's sale of property raised enough money to hire private counsel. However, the trial court refused to grant counsel even a three-hour continuance to accommodate a previously scheduled, unrelated court appearance. Randolph alleged that the court's ruling violated his Sixth Amendment right to be represented by counsel of choice.

A federal district court held a hearing on these claims in 2019. In [May 2020](#), it granted Randolph a new trial on the Sixth Amendment violation, mooting the necessity to address Randolph's innocence claims. In July 2021, the U.S. Court of Appeals for the Third Circuit [upheld that ruling](#). Two days after the U.S. Supreme Court declined to review the county prosecutors' appeal, District Attorney Fran Chardo filed a motion to terminate the prosecution of Randolph. Refusing to concede Randolph's innocence, Chardo wrote that "retrial is not in the public interest at this time" because "[t]he police affiant and the police detective who handled the evidence collection in this case have both died" and "[o]ther witnesses have become unavailable for other reasons."

In 2021, while the Dauphin County prosecutors' request for review by the U.S. Supreme Court was pending, Chardo offered Randolph an "*Alford*" plea in which he could continue to maintain his innocence but would have to admit that prosecutors had sufficient evidence to convict. Under the deal, Randolph would be released for time served but his convictions would remain on his record. "I didn't do this. Innocent people don't plead guilty — as bad as I want to go home," Randolph told *Penn Live*.

In August 2022, a Cook County, **Illinois** judge granted a motion filed by State's Attorney Kim Foxx to [dismiss](#) all charges against **Marilyn Mulero**, who was framed for the murder of an alleged gang member by disgraced former Chicago detective Reynaldo Guevara. Mulero's was one of seven cases Foxx moved to dismiss, but the only case in which a defendant had been sentenced to death. Two additional people framed for murder by Guevara have since been exonerated.

Guevara has been accused of framing defendants of murder in more than 50 cases by beating, threatening, and coercing suspects to obtain false confessions. Thirty-three wrongful convictions tied to Guevara's misconduct have been overturned to date, including death-row exoneree [Gabriel Solache](#) in 2017.



*Samuel Randolph IV*



*Marilyn Mulero at a news conference regarding her exoneration.*

Mulero's case follows the same pattern. In 1992, she was interrogated by Guevara and former Chicago Police Detective Ernest Halvorsen over the course of a 20-hour period, during which she was denied sleep and access to counsel and was threatened with the death penalty and the loss of her two children if she did not confess. She eventually signed a statement prepared by the detectives confessing to one of two murders of gang members who were thought to have been shot in retaliation for a prior gang killing.

After the trial court denied her motion to suppress the confession, Mulero's court-appointed lawyer advised her to plead guilty, which she did in September 1993. A jury was empaneled for the sentencing phase of trial and sentenced her to die. In May 1997, the Illinois Supreme Court overturned her conviction because her trial prosecutor improperly cross-examined her about the suppression motion and then argued to the jury that her answers indicated a failure to express remorse. She was resentenced to life without parole in 1998.

**Governor J.B. Pritzker** commuted her sentence to time served in April 2020, after Mulero had spent 28 years in prison, five of them on death row. She is the third female death-row exoneree in the U.S. since 1973 and the 16<sup>th</sup> exoneree from Cook County — the most of any county in America. At least 14 of the Cook County exonerations have involved official misconduct by police or prosecutors, and eight have involved coerced false confessions.

DPIC's 2021 report, *[The Innocence Epidemic](#)*, explains that Cook County's then 15 death-row exonerations "are directly related to endemic police corruption, as the notorious 'Burge Squad,' operating under Chicago Police Commander Jon Burge, and disgraced Chicago detective Reynaldo Guevara systematically tortured or coerced innocent suspects into confessing to murders they did not commit. Illinois' high rate of wrongful convictions in death cases was a major factor in the state's 2011 repeal of capital punishment, as state officials decided there was no way to correct the inaccuracy of the state's death penalty system."

DPIC also added two **California** cases to its Exoneration List: **Eugene Allen**, who was wrongfully convicted and sentenced to death for the murder of a prison guard in 1976 and acquitted on retrial in 1981; and **Barry Williams**, wrongfully convicted in 1986 and exonerated in 2021 of an allegedly gang-related street shooting in Los Angeles. Official misconduct was present in both of their cases.

All four exonerees are people of color: Randolph, Allen, and Williams are Black; Mulero is Latina. Nearly two-thirds of all U.S. death-row exonerees have been people of color (123 of 190, 64.7%). 54.2% percent are Black; 8.9% are Latinx.

DPIC's review of [National Registry of Exonerations data](#) from 2021 once again found that the use or threat of the death penalty by police or prosecutors led to wrongful convictions in numerous other cases in which the death penalty was not imposed. Of the seven wrongful capital prosecutions that resulted in exonerations in 2021, three resulted in death sentences ([Sherwood Brown](#) and [Eddie Lee Howard](#) in Mississippi and [Barry Williams](#) in California). Juries in three other states sentenced other wrongfully capitally prosecuted defendants to life without parole — [James Allen](#) in Illinois, [George Bell](#) in New York, and [Devonia Inman](#) in Georgia. In the seventh wrongful capital prosecution, Georgia prosecutors secured a murder conviction against [Dennis Perry](#) and then used the threat of an imminent penalty-phase trial to coerce him to agree to waive any guilt-phase appeals in exchange for being spared the death penalty. In five exonerations in non-capital murder prosecutions, witnesses who had pled guilty to avoid the death penalty or had been threatened with the death penalty if they did not cooperate provided false testimony that led to wrongful murder convictions.

Official misconduct was the leading cause of the wrongful convictions, present in 10 of the 12 exonerations. Race was also a significant factor: six of the seven who were wrongfully capitally prosecuted — and all three who were sentenced to death — are Black; overall, nine of the exonerees are African



American. The exonerees averaged 26.5 years between conviction and exoneration, collectively losing more than 300 years to the wrongful convictions. But African-American exonerees averaged 27.8 years from conviction to exoneration, nearly 23% longer than the average of 22.7 years it took to clear white exonerees.

## *Innocence Claims Prompt Execution Deferrals, Garner Bipartisan Support from Lawmakers*

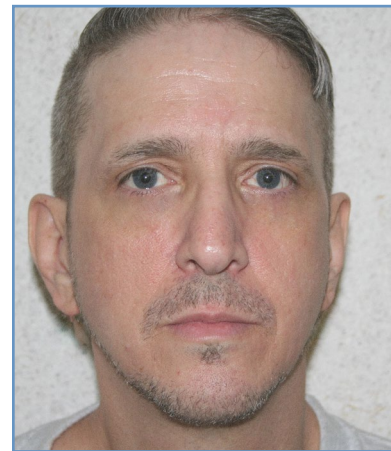
**Richard Glossip**, who has long maintained his innocence, received two reprieves this year from **Oklahoma Governor Kevin Stitt** following significant findings of innocence from an independent investigation into his case. Stitt issued the first 60-day reprieve in [August 2022](#), pushing Glossip's September 2022 execution date to December 2022, to provide time for the Oklahoma Court of Criminal Appeals (OCCA) to determine whether to grant an evidentiary hearing to address innocence claims. Stitt granted a second reprieve on [November 2, 2022](#), again "to allow time for OCCA to address pending legal proceedings," resetting Glossip's December 2022 execution date to February 2023. Later in November, after the second reprieve, the OCCA [twice denied](#) Glossip's petitions for a hearing to review evidence on his innocence claims.

In May 2021, [28 Republican and six Democratic](#) Oklahoma legislators called upon Governor Stitt and the Oklahoma Pardon and Parole Board to conduct an [independent investigation](#) into Glossip's case, after his lawyers had uncovered new evidence supporting his claims of innocence. Glossip was originally sentenced to death for the 1997 murder of Barry Van Treese, his boss at an Oklahoma City motel. The prosecution had no physical evidence linking him to the crime, only the self-serving testimony of his co-defendant, Justin Sneed, who was able to avoid the death penalty by claiming that Glossip had hired him to commit the crime.

The legislators subsequently commissioned an independent *pro bono* investigation by the national law firm, Reed Smith, LLP. Days before the release of the law firm's report, which exposed significant evidence of government misconduct and destruction of evidence, Oklahoma Attorney General John O'Connor filed a motion to set execution dates for Glossip and 24 other death-row prisoners. On July 1, 2022, the same day that Glossip's lawyers filed a motion for an evidentiary hearing on his innocence claim, the state court set the 25 execution dates, scheduling an execution nearly every month from August 2022 through December 2024.

Since 2014, Glossip has been scheduled for execution eight times, and he has been served his last meal three separate times. He received a last-minute reprieve from **then-Governor Mary Fallin** in September 2015 when it was revealed that the state had obtained an incorrect drug for the execution. Glossip's case has not only received bipartisan support from state legislative officials but has also been examined by the Inter-American Commission of

Human Rights (IACHR), which issued a precautionary measure in favor of Glossip in March 2022. In a [press release](#) on the issuance of the precautionary measure, the IACHR identified Glossip's 23 years in



*Richard Glossip*



*Oklahoma Representative Kevin McDugle speaking at a June 15, 2022 press conference announcing the release of the independent investigation into Richard Glossip's case.*

solitary confinement and the repeated, and often last-minute, postponement of scheduled executions as “conditions of detention incompatible with international human rights standards.”

After the OCCA denied Glossip’s motions to permit him to present his new evidence of innocence in court, State Representative Kevin McDugle (R-Broken Arrow), who led the call for an investigation, authored a blistering op-ed in *The Oklahoman* saying: “if the [Oklahoma Court of Criminal Appeals] cannot grant a hearing on this flimsy death penalty conviction, my confidence as a legislator in our state’s judicial system, and its ability to make just decisions and take responsibility for its failures, has been destroyed. ... Who will take responsibility for this travesty? Where is the backbone that will stand for justice? The members of the Oklahoma Court of Criminal Appeals have let us all down. I pray new leadership in the offices of the attorney general and Oklahoma County district attorney find the strength to do what is needed to right this terrible wrong. We cannot kill an innocent man!”

The innocence case of **Texas** death-row prisoner **Melissa Lucio** has also been the subject of international attention and bipartisan legislative action. Lucio was sentenced to death in 2008 on charges that she allegedly beat her two-year-old daughter, Mariah, to death. Lucio’s lawyers, with the support of expert testimony, have presented expert affidavits that Mariah was not murdered at all, but likely died from head trauma following an accidental fall two days prior to her death. The victim of physical, emotional, and sexual abuse from a young age, Lucio has been diagnosed with PTSD, battered woman syndrome, and depression, and has intellectual impairments, all of which, forensic and domestic abuse experts say, made her more vulnerable to coercive interrogation. After five hours of aggressive questioning by police on the night of Mariah’s death, Lucio acquiesced to police pressure, saying, “I guess I did it.”



*Melissa Lucio*

In July 2019, a panel of the U.S. Court of Appeals for the Fifth Circuit [overturned Lucio’s conviction](#), one of only two times the court had granted relief in more than 150 appeals of Texas death sentences imposed this century. However, in February 2021, the full circuit voted 10-7 to reconsider that opinion and [reinstated her conviction and death sentence](#). Supported by amicus briefs filed by a [broad coalition](#) of advocates for victims of domestic and gender-based violence, former prosecutors, legal scholars, and innocence organizations, Lucio sought review in the U.S. Supreme Court. However, in October 2021, the [U.S. Supreme Court denied review](#) of Lucio’s case.

Texas then scheduled Lucio’s execution for April 27, 2022. In response, Lucio filed a motion to [vacate](#) the death sentence and remove the judge and district attorney in her case because of conflicts of interest stemming from their employment of key members of Lucio’s original defense team.

In February, the IACHR granted Lucio a precautionary measure asking the state to refrain from execution until her case is reviewed and to ensure detention conditions align with international human rights standards. Lucio, who has spent 14 years in solitary confinement, is housed in a concrete room the size of a parking space in a building containing female prisoners who suffer from extreme mental illness. Lucio “hears screaming, cursing, banging, and slamming doors throughout the prison,” and is frequently exposed to “airborne chemical agents, which are used to subdue prisoners who are deemed to be acting out,” according to her [petition](#).

In March, [nearly 90 members](#) of the Texas House of Representatives from across the political spectrum, led by Rep. Jeff Leach (R-Plano) issued a call for the Texas Board of Pardons and Paroles and **Governor Greg Abbott** to grant clemency to Lucio. Her clemency petition included statements of support from jurors, forensic and medical experts, anti-domestic violence activists, religious leaders, exonerees, and Lucio’s siblings and children. In a [heated legislative hearing](#), Leach and other legislators pressed

Cameron County District Attorney Luis Saenz to withdraw Lucio's death warrant. He ultimately agreed to do so if the Texas Court of Criminal Appeals (TCCA) did not first issue a stay.

Days before the scheduled execution, as the state Board of Pardons and Paroles was set to consider Lucio's clemency petition, the TCCA [stayed Lucio's execution](#) and granted her review of four issues: that prosecutors obtained her conviction using false testimony, that the jury's exposure to previously unavailable scientific evidence would have resulted in her acquittal, that she is in fact innocent, and that prosecutors suppressed favorable evidence that was material to the outcome of her trial. The court granted the stay "pending resolution of the remanded claims."

## Clemency

On December 13, Oregon **Governor Kate Brown** announced she would grant clemency to all 17 people on the state's death row. "I have long believed that justice is not advanced by taking a life, and the state should not be in the business of executing people—even if a terrible crime placed them in prison," Brown said. She described her action as "consistent with the near abolition of the death penalty" by the state legislature in 2019, when it enacted a new law that significantly limited the circumstances in which the death penalty could be applied. The Oregon Supreme Court then declared that the use of the death penalty against those whose crimes were no longer subject to capital punishment violated the Oregon constitution's prohibition against disproportionate punishment, a ruling that experts said would effectively clear death row. Brown's blanket commutation was the seventh time in the last 50 years that a governor had commuted all of a state's death sentences. Governor Mark Hatfield also commuted the sentences of all of Oregon's death-row prisoners after voters passed a statewide referendum abolishing capital punishment in 1964.

The case of terminally ill death-row prisoner **Gerald Pizzuto Jr.**, put the **Idaho** governor and pardons board at odds, forcing the state supreme court to intervene in the matter. Pizzuto, who experienced a traumatic childhood characterized by chronic severe physical and sexual abuse, suffers from late-stage bladder cancer, chronic heart and coronary artery disease, coronary obstructive pulmonary disease (COPD), and Type 2 diabetes with related nerve damage to his legs and feet. In [December 2021](#), the Idaho Commission of Pardons and Parole voted 4-3 to recommend clemency for Pizzuto. The following day, **Governor Brad Little** rejected the recommendation, leading to a legal battle over his constitutional authority to do so.

An Idaho trial court ruled on [February 4, 2022](#) that Little did not have the power to reject the board's clemency ruling and vacated Pizzuto's death sentence, only to have it later reinstated by the Idaho Supreme Court in an [August 23 ruling](#). Prosecutors then sought and obtained a new death warrant, setting Pizzuto's execution for December 15. On [November 30](#), the Director of the Idaho Department of Corrections provided notice that the state was unable to obtain the lethal drugs necessary to carry out the execution, and the state attorney general's office notified the court that the state would allow Pizzuto's death warrant to expire.



*Texas Representative Jeff Leach (R-Plano) at a press conference for Melissa Lucio.*



*Gerald Pizzuto Jr.*





*Pervis Payne embracing his attorney Kelley Henry.*

## Resentencing of Pervis Payne

After decades of litigation, **Tennessee** death-row prisoner **Pervis Payne**, who has long maintained his innocence, was found to be ineligible for the death penalty because of intellectual disability and in [January 2022](#) was resentenced to two concurrent life sentences. Payne, who has been in prison for 34 years, will be eligible to apply for parole in five years. Shelby County District Attorney Amy Weirich, who had opposed DNA testing of evidence Payne said could prove his innocence and had fought granting him a hearing to prove his ineligibility for the death penalty, later [conceded](#) that he was intellectually disabled. However, she argued to the court that he should be resentenced to two consecutive life sentences, effectively condemning him to death in prison.

International bodies have routinely encouraged the suspension and abolition of death sentences for those with psychosocial and intellectual disabilities, as noted by both the United Nations Human Rights Committee and the Committee on the Rights of Persons with Disabilities. Although the 2002 U.S. Supreme Court case *Atkins v. Virginia* established the unconstitutionality of executing people with intellectual disability, many states, including Tennessee, have been slow to implement the exemption retroactively. Scheduled for execution in December 2020, Payne received a reprieve because of the COVID-19 pandemic. The Tennessee legislature subsequently passed [new legislation](#) that went into effect in May 2021 that allowed Payne, whose IQ scores place him within the intellectually disabled range, to [petition the court to vacate his death sentence](#).

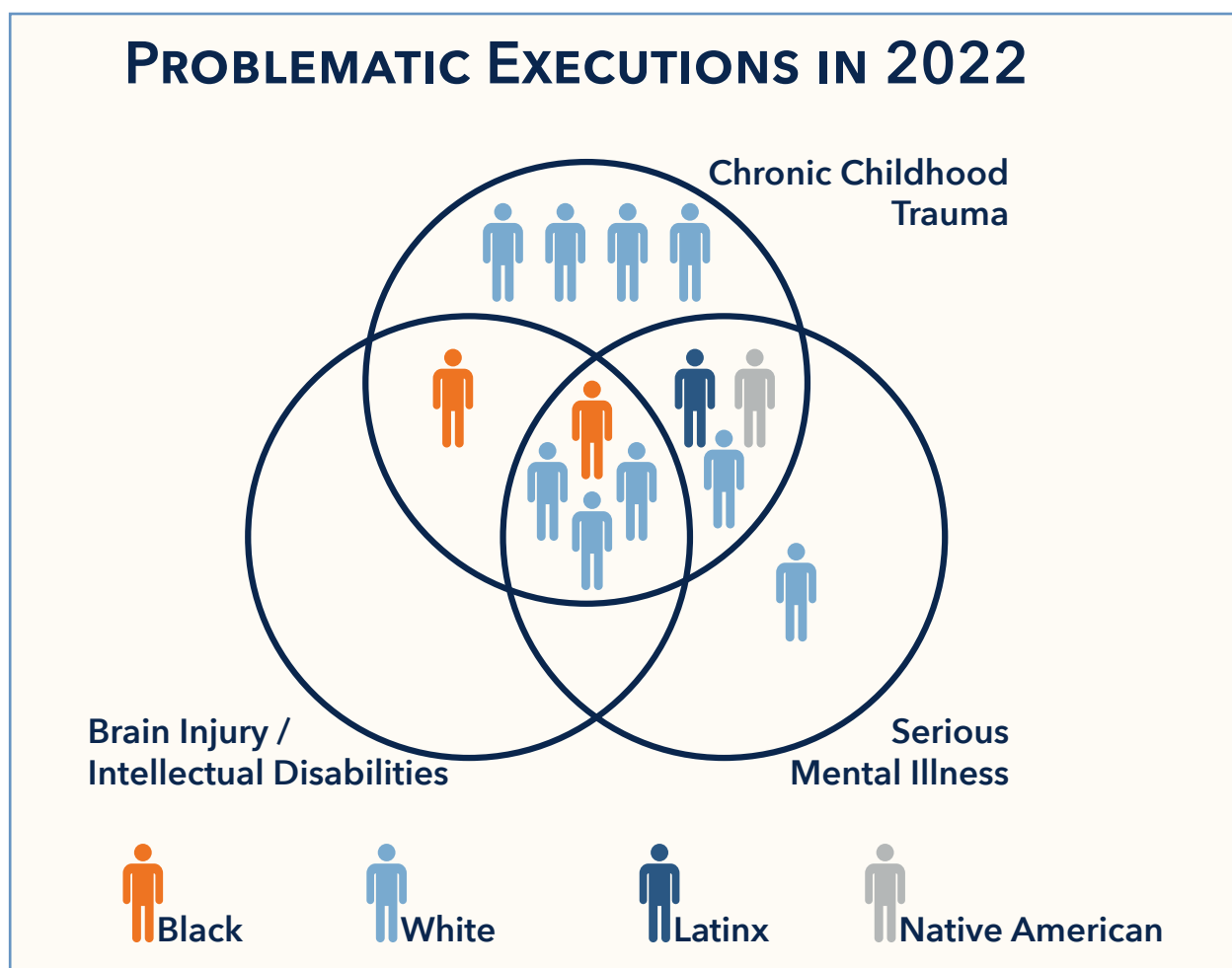
Payne, who is Black, was convicted and sentenced to death in 1987 for the murders of a white 28-year-old woman and her 2-year-old daughter. In a trial marred by prosecutorial misconduct and racial bias, prosecutors alleged without evidence that Payne — a pastor's son with no prior criminal record, no history of drug use, and no history of violence — had been high on drugs and committed the murder after the victim rebuffed his sexual advances. After a 2019 court order compelled the state to provide the defense access to evidence, DNA testing identified the DNA of the two victims and an [unknown male](#) on the handle and blade of the knife used. Payne's DNA was found only on a portion of the knife that was consistent with his account of how he had tried to assist the victims.



## PROBLEMATIC EXECUTIONS

- Significant problems in executions and attempted executions marked 2022 as the year of the botched execution
- 72% of prisoners executed in 2022 had evidence of a significant impairment
- Half of those executed had spent 20 years or more on death row, in violation of international human rights norms

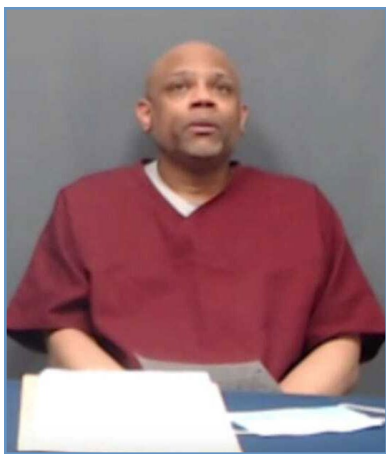
Alongside the systemic problems that have become commonplace in U.S. executions — vulnerable defendants, claims of innocence, inadequate defense, and denial of meaningful judicial review — 2022 featured a shocking number of botched and failed executions. In what could be categorized as “The Year of the Botched Execution,” significant problems were reported in all three of **Arizona’s** executions, and **Alabama’s** executions went so wrong that **Governor Kay Ivey** paused all executions and ordered a “top-to-bottom review” after one execution resulted in “carnage” and the remaining two had to be called off when execution personnel repeatedly failed to establish an IV line.



Several states scheduled executions in violation of their own protocols, without the means to carry them out, or without making arrangements to obtain custody of a person incarcerated in another jurisdiction. A **South Carolina** trial court [struck down](#) that state's attempted use of the electric chair and firing squad as alternatives to lethal injection, and **Tennessee Governor Bill Lee** [halted](#) all executions in his state and appointed an independent counsel to investigate major failures by corrections officials to comply with the state's execution protocol.

As in past years, the vast majority of those executed in 2022 were individuals with significant vulnerabilities. At least 13 of the 18 people executed in 2022 had one or more of the following impairments: serious mental illness (8); brain injury, developmental brain damage, or an IQ in the intellectually disabled range (5); and/or chronic serious childhood trauma, neglect, and/or abuse (12). Three prisoners were executed for crimes committed in their teens: **Matthew Reeves** and **Gilbert Postelle** were 18 at the time of their crimes; **Kevin Johnson** was 19. At least four of the people executed this year were military veterans: **John Ramirez**, **Benjamin Cole**, **Richard Fairchild**, and **Thomas Loden Jr.**

The people executed in 2022 reflected the aging death-row population in the U.S. Six of the 18 people executed were age 60 or older. **Carl Buntion**, who was 78 years old when he was executed in **Texas**, was the third-oldest person ever executed in the United States. Five had significant physical disabilities, including **Clarence Dixon**, who was blind, and **Frank Atwood**, who used a wheelchair as a result of a degenerative spinal condition. Half (9) of those executed in 2022 had spent at least 20 years on death row, a period of time that has been [recognized](#) by international human rights bodies as constituting "excessive and inhuman" punishment, in violation of U.S. human rights obligations. Though these lengthy stays on death row are often the result of legally necessary appeals, the isolation, poor access to healthcare, and harsh conditions exacerbate prisoners' physical and mental health conditions.



*Donald Grant*

**Donald Grant** was executed in **Oklahoma** on January 27 using a lethal-injection protocol that, at the time, was still under review by a federal court. He would be the first of four people executed in 2022 who were convicted in Oklahoma County, raising the county's execution total to 46, the fourth most of any U.S. county in the past half-century. Grant's lawyers had asked the Oklahoma Pardon and Parole Board to commute his death sentence, citing his diagnosis with schizophrenia and his brain damage. "Executing someone as mentally ill and brain damaged as Donald Grant is out of step with evolving standards of decency," they argued at his clemency hearing. The board voted 4-1 to deny commutation.

**Matthew Reeves**, the second prisoner executed in 2022, raised claims that he was ineligible for execution because he was intellectually disabled and that Alabama had violated the Americans with Disabilities Act (ADA) by failing to offer him accommodations for his disability in order to allow him to select his method of execution. A federal appeals court had overturned Reeves' death sentence in part because his trial lawyer failed to present expert testimony on his intellectual disability, but the U.S. Supreme Court, voting along partisan lines, reversed that decision in 2021. The Court also rejected, in a 5-4 decision issued 1½ hours after his execution was scheduled to begin, a claim that the state had violated Reeves' rights under the ADA when it distributed a form to death-row prisoners requiring them to choose between lethal injection and nitrogen hypoxia. The form required an 11<sup>th</sup>-grade reading level to understand. However, Reeves, who had an IQ in



*Matthew Reeves*

the upper 60s to low 70s and read at a first-grade level, was offered no assistance in completing the form. When Reeves did not fill out the form, prosecutors sought and obtained a death warrant scheduling his execution by lethal injection. No one who elected nitrogen suffocation was scheduled for execution. A federal district court issued an injunction, finding that Reeves had demonstrated substantial likelihood of success on the merits of his claim, and the U.S. Court of Appeals for the Eleventh Circuit upheld the injunction. Five justices on the U.S. Supreme Court voted to lift the injunction, allowing Alabama to execute Reeves.

**Gilbert Postelle** was 18 years old, intellectually impaired, mentally ill, and addicted to methamphetamines when, at the direction of his mentally ill father, he, his brother, and a fourth man participated in the fatal shootings of four people. His father delusionally believed that one of the men had been responsible for a motorcycle accident that had left the father seriously brain damaged. Postelle was sentenced to death for two of the shootings — the only person sentenced to death for the killings. His father was found incompetent to stand trial, and the others received life sentences. Oklahoma executed Postelle on February 17, just 11 days before a federal judge began hearing evidence on the constitutionality of the state’s execution protocol.

**Carl Buntion** was Texas’ oldest death-row prisoner and, just days before his scheduled April 21 execution, had been taken to the hospital suffering from pneumonia and blood in his urine. In his clemency petition, which was denied on April 19, his lawyers wrote, “Mr. Buntion is a frail, elderly man who requires specialized care to perform basic functions. He is not a threat to anyone in prison and will not be a threat to anyone in prison if his sentence is reduced to a lesser penalty.” Counsel noted that

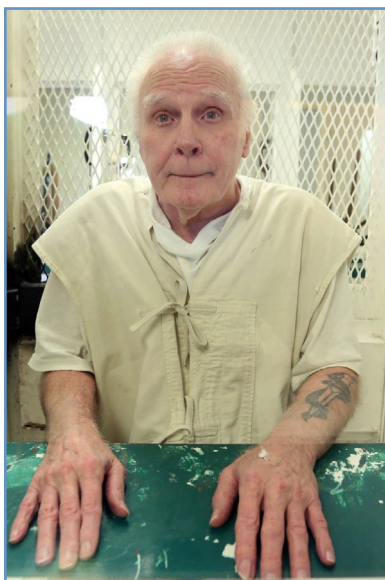
Buntion “ha[d] been cited for only three disciplinary infractions” in his 31 years on death row, “and [had] not been cited for any infraction whatsoever for the last twenty-three years.” They argued that his death sentence had been based on a prediction of future dangerousness that had proven false over his three decades of incarceration.

**Missouri** executed **Carman Deck** after his death sentence had been overturned three separate times. In the decade between his initial death sentence and his third sentencing hearing in 2008, several mitigation witnesses had died or could no longer be located. That delay, a federal district judge ruled, “prevented the jury from adequately considering compassionate or mitigating factors that might have warranted mercy.” He was granted relief for the third time in 2017. On appeal, a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit reversed that ruling on a technicality, holding that Deck’s claim was procedurally defaulted because his post-conviction lawyer had failed to raise the issue in state court. It further ruled that because

the law on the issue had not been settled at the time of Deck’s resentencing, post-conviction counsel’s failure to raise the issue was not ineffective, and Deck therefore could not establish grounds to excuse the procedural default. In a stay application that was denied by the U.S. Supreme Court, Deck’s lawyers argued that “[a] state should not be allowed to repeatedly attempt to



*Gilbert Postelle*



*Carl Buntion*



*Carman Deck*



obtain a death sentence, bungle the process, and then claim victory when no one is left to show up for the defendant at the mitigation phase.” Deck’s petition seeking review of his case called the situation “an egregious example of what happens when the state repeatedly violates the rights of a capital defendant. The state’s earlier failures directly prevented Mr. Deck from presenting a compelling mitigation case at his third resentencing.”

On May 11, Arizona executed [Clarence Dixon](#), a severely mentally ill man. In 1978, then-Maricopa County Superior Court Judge Sandra Day O’Connor, later a Justice of the U.S. Supreme Court, had found Dixon not guilty by reason of insanity on unrelated charges. Judge O’Connor had directed Maricopa County prosecutors to make arrangements for Dixon’s continued custody until civil commitment proceedings, which were scheduled to start within ten days, could begin. Instead, Dixon was released, and two days later committed the offense for which he was executed. Dixon was not connected to the murder for two decades, and at his 2008 capital trial, he was permitted to fire his court-appointed attorneys and represent himself. At trial, Dixon presented a convoluted defense based upon his delusional belief that the charges against him were fueled by a government conspiracy. Despite counsel’s presentation of evidence that Dixon suffered from paranoid schizophrenia, with accompanying auditory and visual hallucinations and delusional thinking, and was now blind, a judge found him competent to be executed.

Dixon’s lawyers also challenged Arizona’s execution process and the drugs it intended to use in the state’s first execution attempt since the botched two-hour execution of [Joseph Wood](#) on July 23, 2014. In court proceedings in advance of the execution, assistant federal defender Jennifer Moreno [argued](#) that “[t]he state has had nearly a year to demonstrate that it will not be carrying out executions with expired drugs but has failed to do so.” Describing Dixon as “a severely mentally ill, visually disabled, and physically frail member of the Navajo Nation,” which opposes capital punishment, she said his execution would be “unconscionable.”

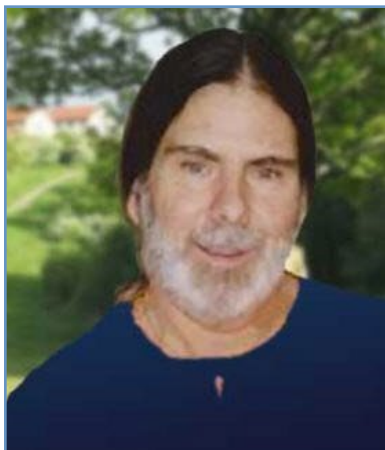
After an execution experts said was [botched](#), witnesses described how Department of Corrections personnel failed for 25 minutes to set an intravenous line in his arms before performing a bloody and apparently unauthorized “shutdown” procedure to insert the IV line into a vein in his groin. Defense lawyers said that the problems were exacerbated by the lack of transparency about Arizona executions. Dixon’s lawyer, assistant federal public defender Amanda Bass, said “[s]ince Arizona keeps secret the qualifications of its executioners, we don’t know whether the failure to set two peripheral lines in Mr. Dixon’s arms was due to incompetence, which resulted in the unnecessarily painful and invasive setting of a femoral line.”

Less than a month later, on June 8, Arizona executed [Frank Atwood](#), who maintained his innocence in the 1984 kidnapping and murder of Vicki Hoskinson. In 2021, Atwood’s lawyers had discovered an FBI memo about an anonymous call the Bureau had received reporting that, after her disappearance, Hoskinson had been seen in a vehicle connected to an alternative suspect. A federal appeals court denied him a hearing on his claims of innocence and that the prosecution had unconstitutionally withheld exculpatory evidence from the defense.

In what *Arizona Republic* reporter Jimmy Jenkins called a “surreal spectacle,” Atwood helped prison officials find a suitable vein for the IV line during his execution. Jenkins wrote, “I have looked behind the curtain of



*Clarence Dixon*



*Frank Atwood*



capital punishment and seen it for what it truly is: a frail old man lifted from a wheelchair onto a hand-icap accessible lethal injection gurney; nervous hands and perspiring faces trying to find a vein; needles puncturing skin; liquid drugs flooding a man's existence and drowning it out." When the execution team was struggling to set the IV line, Atwood first suggested they try his right arm, then his hand, stopping them from their stated intention to establish an IV line in his femoral vein as they had done in Dixon's execution.

Continuing the series of botched executions, Alabama killed [Joe James Jr.](#) on July 28 over the strenuous opposition of the victim's family. The daughters and brother of murder victim Faith Hall [urged](#) Governor Kay Ivey to halt James' execution. Helvetius Hall, Faith's brother, said, "Taking [James'] life is not going to bring Faith back. It ain't going to make no closure for us."



*Joe James Jr.*

James was representing himself at the time of his execution. His execution began with an unexplained three-hour delay, which Alabama Department of Corrections (ADOC) officials later obliquely indicated involved difficulties setting an IV line. While media witnesses were waiting for the execution, corrections officials subjected two female journalists, both of whom had previously witnessed multiple executions, to embarrassing dress code inspections. *AL.com* reporter Ivana Hrynkiw was told that her skirt, which she had worn to witness three previous executions, was "too short." After changing into clothing borrowed from a cameraman from another media outlet, she was then told she couldn't wear open-toed shoes because they were "too revealing," so she retrieved a pair of sneakers from her car. Hrynkiw's employer, the Alabama Media Group, sent a formal complaint the next day, calling ADOC's conduct "sexist and an egregious breach of professional conduct."

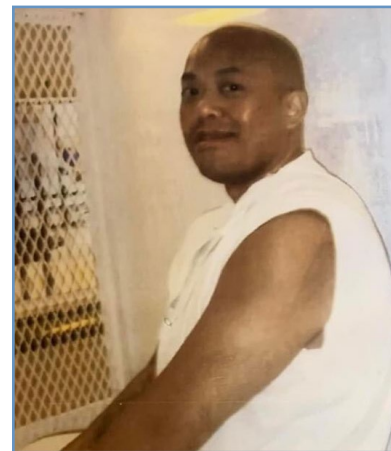
The clothing inspections diverted attention from the state's repeated failures to set an IV line, as a later private autopsy [revealed](#). In the words of *Atlantic* writer Elizabeth Bruenig, who had facilitated and witnessed the private autopsy, "[s]omething terrible had been done to James while he was strapped to a gurney behind closed doors without so much as a lawyer present to protest his treatment or an advocate to observe it." Bruenig wrote of "carnage" on James' body, that his "hands and wrists had been burst by needles, in every place one can bend or flex" during what she called a "lengthy and painful death." When the execution chamber curtains were opened three hours after the scheduled start of James' execution, he was motionless and non-responsive. Anesthesiologist Joel Zivot, who witnessed the private autopsy, noted that there were puncture wounds, accompanied by bruises, throughout James' arms, and bruising around the knuckles and wrists that suggested that execution team members tried and failed to insert IV lines in those locations. They also found puncture wounds in James' musculature, "not in the anatomical vicinity of a known vein." "It is possible that this just represents gross incompetence, or some, or one, or more of these punctures were actually intramuscular injections," Zivot wrote, noting that such an injection "in this setting would only be used to deliver a sedating medication."

James' execution was the longest botched lethal-injection execution in the 40-year history of that execution method. ADOC denied having sedated James and Commissioner John Hamm insisted that "nothing out of the ordinary" had occurred during the three-hour period between the scheduled start of the execution and the time the execution curtain opened.

Texas' execution of [Kosoul Chanthakoummane](#) on August 17 also took place over the objections of the victim's family. Joe Walker, whose daughter, Sarah, was murdered, said of Chanthakoummane, "I don't have any hate towards him at all. I don't want him put to death." Chanthakoummane's conviction relied on multiple forms of discredited forensic evidence, including notoriously unreliable bite mark evidence

and hypnotically enhanced eyewitness testimony. Chanthakoummane, the son of Laotian refugees who escaped to the United States during the Vietnam war, had long maintained his innocence. Prosecutors said his DNA had been found under Walker's fingernails and in various locations throughout the house, but defense lawyers argued that the DNA testimony purporting to identify him as the assailant was statistically flawed.

On July 6, Oklahoma [set 25 execution dates](#), scheduling an execution nearly every month from August 2022 to December 2024. The first person executed as part of Oklahoma's unprecedented execution spree was [James Coddington](#). Coddington took full responsibility and expressed deep remorse for the addiction-driven murder of his friend, Albert Hale. At his clemency hearing, he gave an emotional statement to the board, saying, "I can't apologize enough for what I did." After hearing Coddington's plea, as well as evidence of his traumatic upbringing and lifelong battle with ad-



*Kosoul Chanthakoummane*



*James Coddington and his attorney at his clemency hearing*

diction, the Oklahoma Pardon and Parole Board recommended clemency by a 3-2 vote. **Governor Kevin Stitt** rejected the board's recommendation and Coddington was executed on August 25.

With no apparent review of or changes to its execution protocol following the botched execution of Joe James Jr., Alabama proceeded with the lethal-injection execution of [Alan Miller](#) on September 22. Miller challenged his execution on the grounds that he had timely designated nitrogen hypoxia as the method of his execution but that ADOC personnel had lost his designation form. In court proceedings on that challenge, state prose-

cutors intimated that ADOC could execute him by lethal gas. However, when the federal district court set a firm deadline to declare if ADOC was prepared to proceed with lethal gas, [ADOC said it could not do so](#). On September 19, 2022, the district court issued a [preliminary injunction](#) enjoining Alabama from executing Miller "by any method other than nitrogen hypoxia." On the afternoon of his scheduled execution, a divided panel of the U.S. Court of Appeals for the Eleventh Circuit denied the state's motion to set aside the injunction. At about 9:15 p.m. Central time, the U.S. Supreme Court issued a 5-4 ruling that vacated the injunction, leaving Alabama approximately 2½ hours to carry out the execution before the warrant expired.

Prison officials reportedly attempted as many as 18 times to establish an IV line before calling off Miller's execution shortly before midnight, when the execution warrant would expire. ADOC Commissioner Hamm blamed the failure on "time constraints resulting from the lateness of the court proceedings." He said, "the execution was called off once it was determined the condemned inmate's veins could not be accessed in accordance with our protocol before the expiration of the death warrant." After the execution, a federal judge granted a request from Miller's lawyers to take photos and video of Miller to [preserve all ADOC records related to the execution](#) to document what had transpired and the injuries Miller sustained in the attempted execution. On November 28, the state settled Miller's method-of-execution challenge, [agreeing](#) that it would no longer attempt to execute him by lethal injection and that any future execution attempt would be by means of nitrogen hypoxia.

Less than two months later, a second Alabama execution was called off after officials spent an hour failing to set IV lines during the attempted lethal injection of [Kenneth Smith](#) on November 17. The

execution was already controversial because the trial court [overrode the jury's 11-1 vote for life](#) under a since-repealed provision of Alabama law. According to Andy Johnson, a lawyer for Smith, the state strapped Smith to a gurney for approximately four hours while his motion to stay his execution was pending, was granted by the U.S. Court of Appeals for the Eleventh Circuit, and then was lifted by the U.S. Supreme Court. As in Miller's case, Smith's lawyers immediately filed requests to preserve evidence from the execution attempt. Five days after the state's failed attempt to execute Smith, Alabama Governor Kay Ivey [halted](#) executions in the state, ordering ADOC to undertake a "top-to-bottom review" of the execution protocol.

Two executions were carried out over the objections of local prosecutors. Texas executed [John Ramirez](#) on October 5 after the Texas Court of Criminal Appeals (TCCA), without ruling on the merits, rejected the request of Nueces County District Attorney Mark Gonzalez to withdraw the death warrant. Gonzalez's office had filed a motion, granted by the county trial court on April 12, to set an execution date for Ramirez. Two days later, Gonzalez, a former defense attorney who was elected in 2016 on a platform of criminal justice reform, attempted to withdraw the warrant. Stating his "firm belief that the death

penalty is unethical and should not be imposed on Mr. Ramirez or any other person while the undersigned occupies the office in question," Gonzalez told the court that "[t]he Assistant District Attorney who most recently moved for an execution date in this cause was not aware of my desire in this matter and did not consult me prior to moving for an execution date." The trial judge denied Gonzalez's motion on June 21, saying "I'm not sure that I have the power to do so."

The trial court's view in Ramirez's case diverged sharply from the understanding of the law expressed by several dozen Texas legislators and Cameron County District Attorney Luis Saenz during April 14, 2022 legislative hearings relating to the scheduled execution of Melissa Lucio. During those hearings, described by reporters as "heated," legislators pressed Saenz to withdraw Lucio's death warrant, citing evidence of probable innocence and police misconduct. Saenz agreed with the legislators that he had the power to withdraw the warrant and eventually agreed that he would do so if the TCCA did not issue a stay. The point became moot when the court halted Lucio's execution and directed that an evidentiary hearing be conducted on her innocence claims.

Missouri also executed a prisoner over the objections of a prosecutor. In 2021, [Kevin Johnson](#)'s defense team had requested that the St. Louis County Conviction and Incident Review Unit (CIRU) evaluate Johnson's case. Because of a conflict of interest in the CIRU, the trial court appointed E.E. Keenan as a special prosecutor. Keenan's investigation of the case found racial disparities in decisions to seek the death penalty by former county prosecuting attorney Robert McCulloch, as well as "deliberate" exclusion of Black jurors from Johnson's jury. Special prosecutor Keenan then asked the trial court to stay Johnson's execution and vacate his death sentence. The court denied his motion and both Johnson and the special prosecutor appealed. The Missouri Supreme Court heard argument in Johnson's case less than 36 hours before his execution was scheduled to begin and ruled against Johnson. The U.S. Supreme Court then declined to review the case, allowing the execution to proceed. On November 29, Johnson was executed.



*Kenneth Smith*



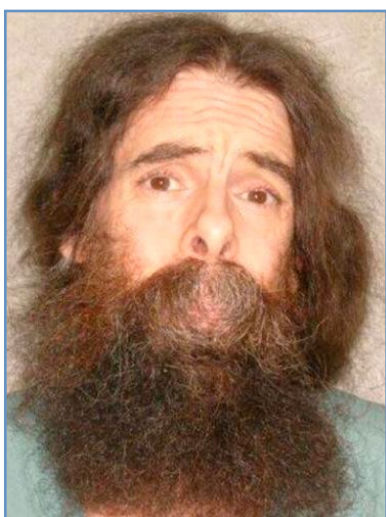
*John Ramirez*



Oklahoma continued its execution spree with the October 20 execution of **Benjamin Cole**. Cole had schizophrenia and brain damage, and his lawyers, who described Cole as often “catatonic,” said prison guards who had daily interactions with him “confirm that he cannot communicate or take care of his most basic hygiene.” Counsel sought a hearing on his mental competency to be executed, arguing that he did not understand the reason for his impending execution. A judge denied counsel’s request for a competency hearing. In Cole’s clemency petition, his legal team wrote, “Benjamin Cole today is a frail, 57-year-old man with a damaged and deteriorating brain, suffering from progressive and severe mental illness who poses no threat to anyone in any way.”



*Kevin Johnson with his daughter and grandson.*



*Benjamin Cole*

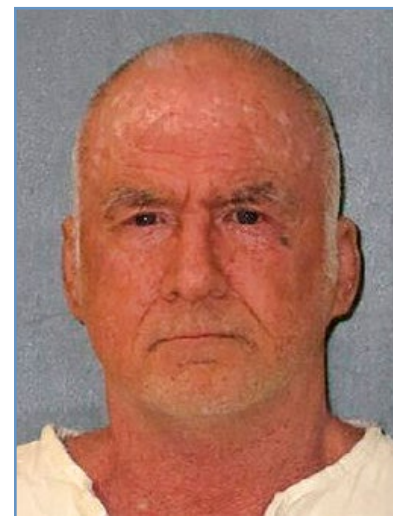
Significant mental health issues were also raised in Texas’ November 9 execution of **Tracy Beatty**. Defense lawyers had argued that Texas’ refusal to uncuff Beatty so that a psychiatrist and a neuropsychologist could administer testing to assess brain impairments constituted unlawful state interference with services Congress has authorized be made available to federal counsel representing death-row prisoners in clemency and other potential capital post-conviction proceedings. Beatty was diagnosed with paranoid schizophrenia and experienced hallucinations and delusions. The Texas state and federal courts and the U.S. Supreme Court declined to stay his execution to permit the testing to occur, rewarding Texas’ refusal to grant access to comprehensive mental health evaluations. Beatty was executed without any judicial consideration of the extent of his deteriorated mental condition and its impact on his mental incompetency.

**Stephen Barbee**, whose execution had been stayed due to a religious freedom claim in 2021, was executed in Texas on November 16 for the murders of his ex-girlfriend Lisa Underwood and her son. No DNA or forensic evidence connected Barbee to the murders, though a local medical examiner, Dr. Marc Krouse, testified that Barbee had killed Underwood by applying between 100 and 400 pounds of force to her throat for a period of 5 to 7 minutes.



*Stephen Barbee*

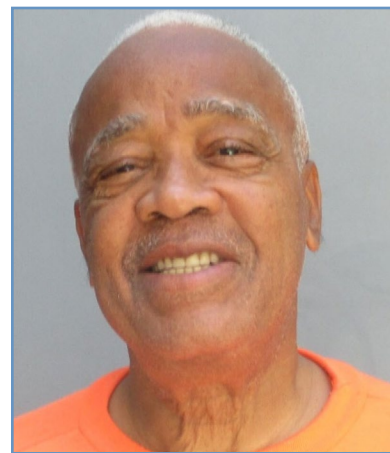
Barbee had sought judicial review of his attorney’s unilateral decision to concede his guilt without his consent, in violation of his constitutional rights. He also requested a new trial because newly discovered evidence showed that Krouse had been suspended from performing autopsy examinations on homicide cases because of a pattern of errors and negligent practices and that his forensic testimony concerning the cause of Underwood’s death was false. An audit of Krouse’s autopsies conducted by the Tarrant County Medical Examiner’s Office revealed that Krouse “had made 59 mistakes during the autopsies of 40 murder victims.”



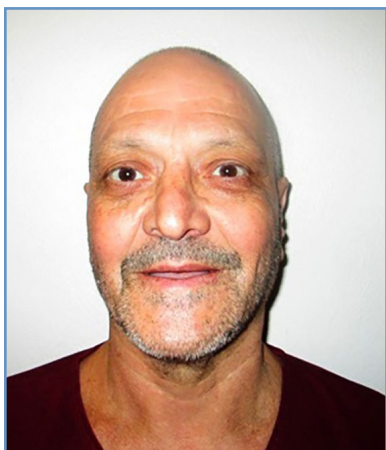
*Tracy Beatty*



In its third botched execution of the year, Arizona executed [Murray Hooper](#). Though Hooper had been on death row for nearly forty years, the prosecution revealed new information in the lead-up to Hooper's clemency hearing that supported his innocence claim and called into question the testimony of a key witness. That information was never heard in court. Hooper also unsuccessfully sought DNA and fingerprint testing of evidence from his case, citing a recent Arizona law that expanded access to modern forensic testing in old cases. At Hooper's November 16 execution, corrections officials once again struggled to insert an IV. After questioning what was taking the execution team so long to set an IV line, Hooper reportedly turned to the witnesses and asked, "Can you believe this?" Executioners eventually resorted to inserting the IV in Hooper's femoral vein in the groin area.



*Murray Hooper*



*Richard Fairchild*

On November 17, Oklahoma executed [Richard Fairchild](#), a military veteran with serious mental illness and brain damage. Fairchild sustained several traumatic head injuries during his youth, both from his abusive father and from participating in boxing as a teenager. His medical and military records indicate an additional five head injuries as an adult. A psychiatrist's evaluation before his trial noted "severe organic brain syndrome," but his trial lawyer did not question the psychiatrist about it during the trial and explained Fairchild's crime solely as a result of substance abuse. Fairchild's clemency petition included an affidavit from one of his jurors indicating that she would not have voted for death if she had known about Fairchild's brain damage.

**Mississippi** carried out the final execution of the year on December 14, when it executed **Thomas Loden Jr.** Loden had experienced physical and sexual abuse during childhood, and had attempted suicide five times. He was a Marine veteran who received numerous awards and medals for his service, but who developed PTSD as a result of his combat experience in the Gulf War. Loden was the fourth military veteran executed in 2022. A public opinion poll released in February 2022 found that 61% of respondents opposed the execution of veterans with PTSD, suggesting that, if Loden's trial attorneys had appropriately investigated and presented the mitigating evidence in his case, he might have been spared a death sentence.



*Thomas Loden Jr.*

## PUBLIC OPINION AND ELECTIONS

- Support for capital punishment remained near historic lows amidst rising perceptions of crime
- Large majorities of Americans oppose executing people with mental illness, brain damage, or intellectual disability, or veterans with PTSD
- Midterm elections favored reform prosecutors and gubernatorial candidates supporting continuation of moratoria on executions

### Americans' Support for Death Penalty



Support for capital punishment in the United States remained near half-century lows in 2022 despite record-high perception that local crime has increased. The results of the 2022 mid-term election showed gains for candidates favoring reform of the criminal legal system in the face of an avalanche of dark money spending attempting to portray them as dangerously soft on crime.

[Gallup's 2022 Crime Survey](#), administered between October 3 – 20, 2022 against the backdrop of the Parkland school shooting trial, reported support for capital punishment held steady at 55%, one percentage point above the 50-year low of 54% in 2021. According to Gallup, support for capital punishment has remained between 54-56% for each of the past six years. 42% of respondents told Gallup they oppose the death penalty, one percentage point below 2021's 50-year high.

Support for capital punishment, which historically had tracked Americans' fear of crime, did not materially rise despite the largest increase in fifty years in the number of U.S. adults who reported that crime is up in the area in which they live. The spike in perceived crime was fueled primarily by a surge in fear among those identifying as Republicans, whose perception that local crime is rising increased from 38% in the final year of the Trump presidency to 73% at the approach of the first midterm elections of the Biden administration. Yet in that same two-year period, Gallup found that Republican support for capital punishment fell from 82% to 77%. Nationally, 56% of Americans told Gallup that local crime was up.

An October 31, 2022 **Pew Research** poll noted the disconnect between crime data and Americans' perception of crime after being exposed to a tsunami of partisan midterm election advertising that falsely blamed Democrats and reform prosecutors for a rise in violent crime during the COVID pandemic. Pew noted that, in fact, "[a]nnual government surveys from the Bureau of Justice Statistics show no recent increase in the U.S. violent crime rate." Although murder rates have "risen significantly during the pandemic" and the "roughly 30% increase in the U.S. murder rate between 2019 and 2020 [was] one of the largest year-over-year increases ever recorded," Pew reported that "the rate remained well below past highs, and murder remains the least common type of violent crime overall."

DPIC reviewed the [2020 murder data](#) compiled by the center-left think tank The Third Way for its March 2022 report, *The Red State Murder Problem*. DPIC compared the data to states' death-penalty status and historic usage of capital punishment. That analysis found that pandemic murder rates generally correlated not just with the presence or absence of the death penalty in a state but with the state's general level of death-penalty usage. Murder rates in the mostly high death-penalty usage, high pandemic-murder-rate states ranged from roughly triple to 23 times higher than in the mostly no death penalty, low pandemic-murder-rate states.

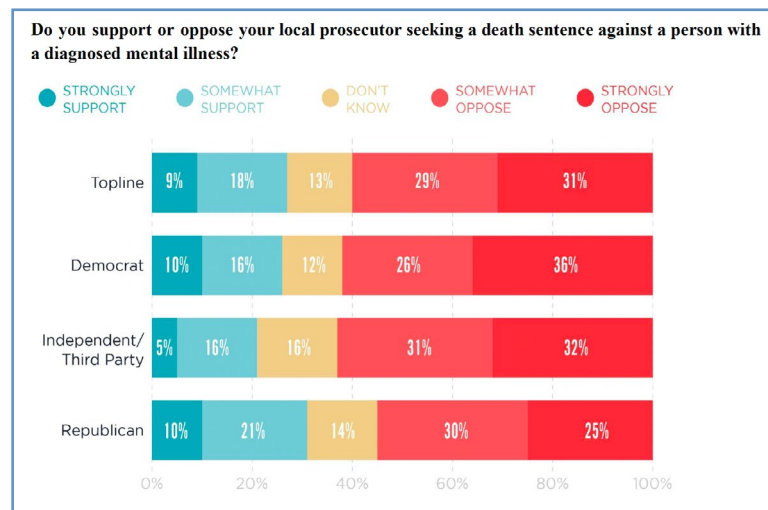
[Gallup's 2022 Values and Beliefs Survey](#), administered from May 2 – 22, 2022 and released in June 2022, showed that Americans' support for capital punishment mirrors their views of its moral acceptability. Gallup found that 55% of Americans regarded the death penalty as morally acceptable, fractionally above the record low of 54% in the organization's [2020 survey](#). The number matched the 55% level of acceptability reported in the 2021 Values and Beliefs survey.

Public support for capital punishment varies considerably depending upon the question that is asked. Gallup periodically asks respondents to choose whether the death penalty or life without possibility of parole "is the better penalty for murder." The last time Gallup asked that question, in 2019, [60% percent of Americans](#) chose the life-sentencing option, while only 36% favored the death penalty.

A poll by **Rasmussen Reports** found even less support for capital punishment than reported by Gallup. The Rasmussen poll, conducted in a telephone and online survey October 16 – 17, 2022 and released November 10, 2022, found that fewer than half of American adults now support the death penalty. Asked "Do you favor or oppose the death penalty?" 46% of respondents said they favored capital punishment. Twenty-eight percent of respondents told Rasmussen they oppose the death penalty and 26% said they weren't sure.

The survey recorded a continuing decline in expressed support for capital punishment. Those saying they favored the death penalty fell by 17 percentage points from the 63% who favored capital punishment in Rasmussen's June 2011 national survey. Death penalty support also fell by three percentage points from July 2019, when 49% of respondents told Rasmussen they favored the death penalty.

A poll released in February 2022 by the [Justice Research Group](#) found that Americans' support for the death penalty was even lower when asked about the classes of defendants who are most frequently subject to the punishment. Democrats, Republicans, and Independents by margins of more than 30 percentage points opposed the use of the death penalty against people with severe mental illness, brain damage,



or intellectual impairments, and against veterans with PTSD. The poll found pluralities of each group opposed to seeking the death penalty against victims of severe abuse, and Americans nearly evenly split on the propriety of the death penalty for adolescent offenders between the ages of 18 and 21.

The level of support for capital punishment mirrored recent years even in polls administered at the height of the American mid-term elections during a barrage of advertising that attempted to stoke voters' fear of violent crime.

## Election Results

Despite massive special interest campaign spending, election results at the state and local levels reflected continued public support for officials committed to criminal legal system reform — including policies that could significantly reduce the use of the death penalty.

Governors were up for election in the three states that had officially declared moratoria on executions: **California**, **Oregon**, and **Pennsylvania**. In each of these states, gubernatorial election results ensure that the moratoria will continue. **Governor Gavin Newsom**, who announced a moratorium on executions in 2019 and decisively defeated a recall effort in 2021, easily won re-election in California. Governor-elect **Tina Kotek**, the former Speaker of the Oregon House of Representatives, has promised to extend the state's existing moratorium on executions. Pennsylvania's next governor, Attorney General **Josh Shapiro**, has also pledged not to sign execution warrants while in office. **Ohio**, a state without a formal moratorium, re-elected **Governor Mike DeWine**, who has issued a series of reprieves to death row prisoners based on obstacles to the state's provision of execution drugs.

Governorships changed hands in two key death-penalty states. **Nevada's** Democratic Governor **Steve Sisolak**, who helped scuttle a bill to abolish the state's death penalty fearing it might hurt his re-election chances, was defeated anyway by Republican **Joe Lombardo**, the Sheriff of Clark County, the state's most active death-penalty jurisdiction. The election effectively forecloses death-penalty repeal in the state for the foreseeable future. In **Arizona**, Democrat **Katie Hobbs** won the race to replace term-limited Republican Doug Ducey, defeating Republican election denier, **Kari Lake**. Also in Arizona, Democrat **Kris Mayes**, who supports the death penalty but was critical of the state's execution botches, expenditure of funds to purchase cyanide compounds for possible gas chamber executions, and aggressive pursuit of death warrants, led Republican election denier **Abraham Hamadeh** — pending a recount — in the race to replace Attorney General Mark Brnovich.

Prosecutors campaigning on a commitment to criminal legal system reform were elected in several counties that have previously produced a disproportionate amount of death sentences and executions. These victories occurred despite consistent messaging targeted at fear of violent crime and political attacks against some sitting reform prosecutors.



*California Governor Gavin Newsom, Oregon Governor-elect Tina Kotek, and Pennsylvania Governor-elect Josh Shapiro*



Voters ousted long-time Shelby County, **Tennessee** prosecutor [Amy Weirich](#) in favor of **Steve Mulroy**, a University of Memphis law professor and former county commissioner and federal civil rights prosecutor. Weirich, who headed an office that represented 13% of Tennessee's population but was responsible for one-third of all death sentences in the state, sought re-election based on what her campaign touted as her "tough on crime" policies. She faced backlash from community activists for her efforts to prevent Shelby County death-row prisoner **Pervis Payne** from obtaining DNA testing for his innocence claim and for opposing efforts to overturn Payne's unconstitutional death sentence because of his intellectual disability.



*Vicki Behenna*

Oklahoma County, **Oklahoma** elected **Vicki Behenna**, the former executive director of the Oklahoma Innocence Project, to serve as its top prosecutor. Behenna will take the prosecutorial reins in a county that has imposed more death sentences over the past fifty years than any other county its size (population between 750,000 – 1,000,000), imposed more death sentences in the past decade than any other county with a population under 2.25 million people, and carried out more than 2.5 times the number of executions of any other comparably sized county. The Oklahoma County District Attorney's office has a long history of prosecutorial misconduct, with at least eleven death sentences reversed

or death-row prisoners exonerated because of misconduct. Only three counties in the U.S. have had more wrongfully convicted death-row prisoners exonerated than Oklahoma County, with the innocence issues in the cases of **Julius Jones** and **Richard Glossip** still unresolved.

Mulroy and Behenna have not pledged to never seek the death penalty but are replacing aggressively pro-capital punishment prosecutors in counties that have been disproportionate drivers of death sentencing.

In Alameda County, **California**, civil rights attorney **Pamela Price** won the district attorney's race. Price, a former defense attorney, will be the first Black woman to serve in the role. She campaigned on promises to right past wrongs, including seeking resentencing for all 41 people currently on death row from Alameda County and those sentenced to life without parole. Price's election was seen as a test of the durability of prosecutorial reform after the recall of San Francisco District Attorney **Chesa Boudin**. Price's election reinforced the message sent by the failed attempt to recall Los Angeles District Attorney **George Gascón**, that California voters remain receptive to prosecutorial reform.



*Wesley Bell*

Reform prosecutors **John Cruzot** (Dallas) and **Joe Gonzales** (San Antonio) were re-elected in Texas, despite opponents' concerted efforts to attack their reform initiatives. Elsewhere in Texas, Fort Bend's reform D.A. **Brian Middleton** was re-elected without opposition and reformer **Kelly Higgins** won the District Attorney election in Hays County.

Incumbent prosecutors who have signed a pledge to work to end the death penalty were re-elected in Durham and Buncombe counties in North Carolina (Democrats **Satana Deberry** and **Todd Williams**); St. Louis County, Missouri (Democrat **Wesley Bell**), and Salt Lake County, Utah (Republican **Sam Gill**). County Attorney **David Leavitt**, who supported a bill to abolish the state's death penalty, faced attacks based upon QAnon conspiracy theories, and was defeated in the Republican primary election in Utah County.



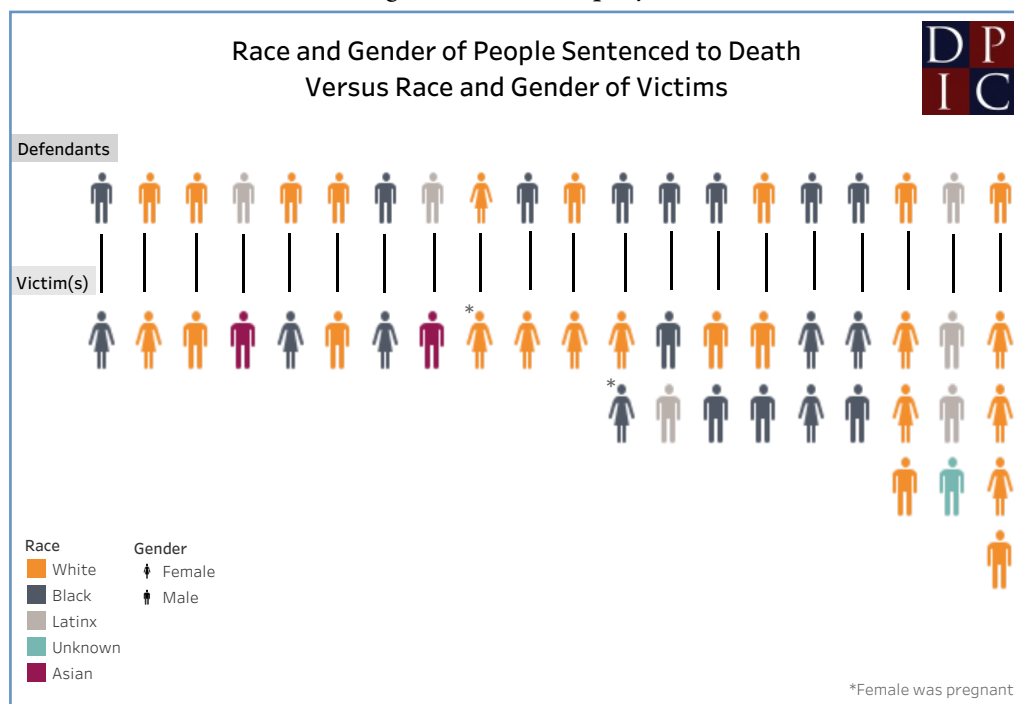
*Pamela Price*

## PROBLEMS WITH NEW DEATH SENTENCES

- The 20 death sentences imposed in 2022 were fewer than in any year prior to the pandemic
- No county imposed more than one new death sentence in 2022
- The life sentence imposed in the Parkland School shooting and other multiple-victim cases highlighted the disproportionality of capital murder verdicts in 2022

Twenty death sentences were imposed in 2022, two more than the record lows in the pandemic years of 2020 and 2021, but fewer by far than in any pre-pandemic year in the modern era of the death penalty. Death verdicts were concentrated in historically high-sentencing states, although four states imposed their first death sentences since the beginning of the pandemic. Life sentences in the Parkland school shooting case and other significant multi-victim cases demonstrated the disproportionality of many of the death sentences imposed in 2022. Those death sentences also disproportionately involved cases with the most vulnerable defendants or the greatest defects in legal process.

The 2022 death sentences included at least four defendants who experienced mental health issues resulting from chronic exposure to childhood trauma, two who were permitted to waive important trial rights and then asked for the death penalty, one with brain damage exacerbated by chemical dependence and substance abuse disorder, one with an IQ in the intellectually disabled range who had a one-day sentencing trial, and one military veteran. One prisoner, **Ricky Dubose** in **Georgia**, died by suicide ten days after being sentenced to death. Seven death sentences were imposed in cases in which law enforcement or corrections officers were victims, including the first Sikh deputy in Texas.



Nineteen men and one woman, **Taylor Parker** (Texas), were sentenced to death.

**Florida** imposed the most death sentences in the U.S. in 2022 with four. **Alabama** imposed three, and **California**, **North Carolina** and **Texas** each imposed two. These states, which also currently have the five largest death rows in the U.S., were the only states to impose multiple death sentences. Seven other states — **Arizona**, **Georgia**, **Louisiana**, **Mississippi**, **Missouri**, **Oklahoma**, and **Pennsylvania** — imposed a single death sentence each.

Harris County, **Texas** defendant **Robert Solis** fired his lawyers and represented himself in his trial for the murder of the county's first Sikh sheriff's deputy. In the penalty phase, he asked the jury to sentence him to death. After only 35 minutes of deliberation, the jury sentenced him to death.

**William Roberts** was sentenced to death in Lake County, Florida after also volunteering for the death penalty. Roberts waived a jury trial, tried to represent himself in court, refused to attend parts of the trial, would not permit his counsel to present mitigating evidence, and asked the judge to sentence him to death.

In **Louisiana**, **Kevin Daigle** was formally sentenced to death in Calcasieu Parish for the murder of a state trooper in 2015. His trial was initially delayed when the trial judge, who had a longtime working and social media relationship with the victim's widow — a court employee who was scheduled to be a prosecution penalty-phase witness — refused to recuse himself from the case. After falsely denying in a written opinion that he had social media contact with the witness, the judge later admitted to the relationship under oath. The Louisiana Supreme Court subsequently ordered that a new judge be designated to handle the case. Daigle was convicted in 2019, and the jury at that trial recommended the death penalty. However, during post-trial motions, the prosecution and defense agreed that one of the jurors had been improperly impaneled and that the death verdict should be vacated. Daigle, who suffers from brain damage, chemical addiction and substance abuse, and has a history of childhood trauma, was again sentenced to death this year.

**Jimmy Spencer** was sentenced to death in Alabama despite significant evidence that he was ineligible for the death penalty because of intellectual disability. His lawyers filed a motion pretrial to bar the death penalty, presenting an IQ score of 56 (far below the 70-75 IQ range considered indicative of intellectual disability), school records that showed he failed multiple grades and was placed in special education, and evidence that he cannot read or write. A prison IQ test placed Spencer's IQ at 73. The judge denied Spencer's motion and allowed the case to proceed as a capital trial. Spencer's penalty phase was tried in a single day, with his defense counsel presenting a mitigation investigator as the only live witness. The jury took just 40 minutes to return a death sentence.

Twelve death sentences (60%) were imposed on defendants of color. Ten Black defendants and four Latino defendants were sentenced to death. Most cases involved defendants and victims of the same race, but one Black defendant was sentenced to death for the murder of a white woman and one white defendant was sentenced to death for the murder of his biracial daughter. At least four cases involved multiple victims of different races.

## NEW DEATH SENTENCES BY STATE

STATE	2022	2021
FLORIDA	4	2
ALABAMA	3	4
CALIFORNIA	2	3
NORTH CAROLINA	2	0
TEXAS	2	3
ARIZONA	1	0
GEORGIA	1	0
LOUISIANA	1	0
MISSISSIPPI	1	0
MISSOURI	1	0
OKLAHOMA	1	4
PENNSYLVANIA	1	0
NEBRASKA	0	1
TENNESSEE	0	1
<b>TOTAL</b>	<b>20</b>	<b>18</b>

For the first time in nine years, a Missouri jury recommended a death sentence, but St. Charles County Judge Daniel Pelikan [exercised](#) his authority “to reduce the punishment [recommended by the jury] within the statutory limits prescribed for the offense if it finds that the punishment is excessive.” In 2017, **Marvin Rice** had been sentenced to death by a judge after his jury voted 11-1 for a life sentence. Under Missouri law, a non-unanimous sentencing recommendation is considered a hung jury, triggering a statutory provision that allows the trial judge to independently impose sentence. The Missouri Supreme Court overturned that death sentence because the prosecutor had improperly commented on Rice’s decision not to testify, violating his Fifth Amendment right. Judge Pelikan reportedly considered the 2017 jury’s decision in choosing to sentence Rice to life. Later in the year, Missouri sentenced **Richard Emery** to death, marking the first time since 2013 that a Missouri jury and judge agreed to impose a death sentence.

As pandemic restrictions eased and courts began to re-open, five states imposed their first death sentences since the start of the pandemic: Georgia, Louisiana, Missouri, North Carolina, and Pennsylvania.

### *Notable Cases in Which Death Sentences Were Rejected*

A number of cases that resulted in life sentences in 2022 provided evidence of the continuing arbitrariness and disproportionality of capital punishment.

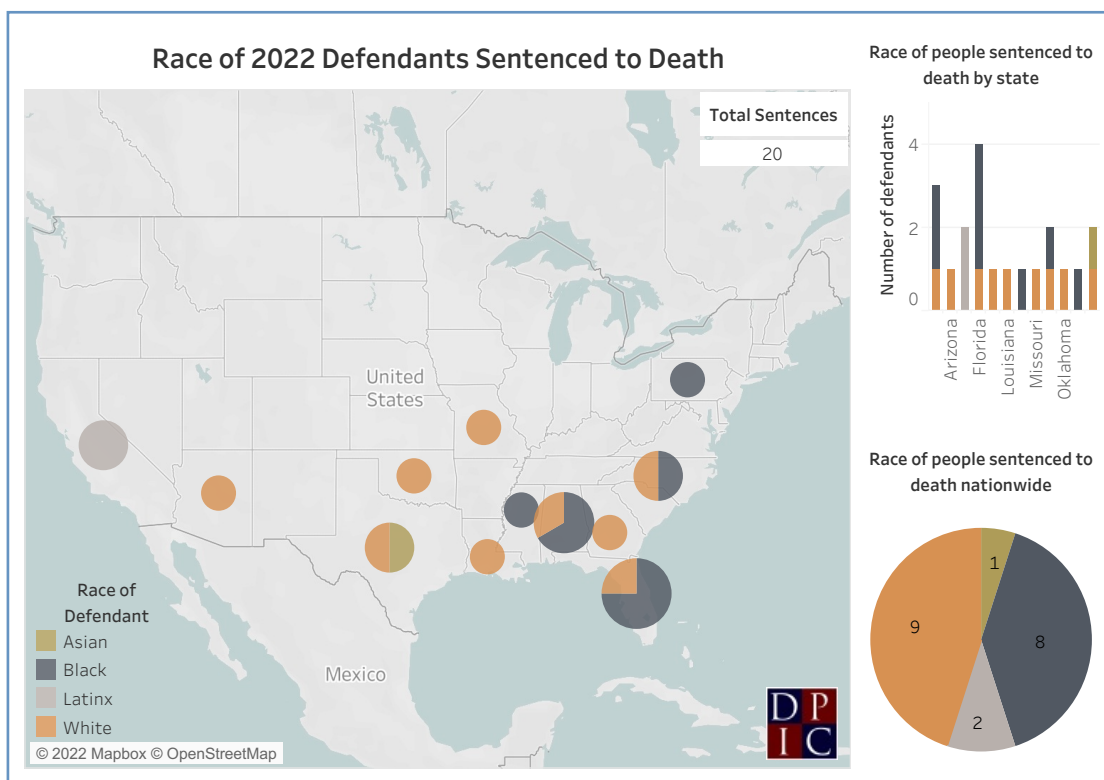
In October, a Florida jury [recommended](#) a sentence of life without parole for Nikolas Cruz, the man convicted of killing 17 people in a mass shooting at Marjory Stoneman Douglas High School. Prosecutors had rejected a defense offer in 2019 for Cruz to plead guilty and be sentenced to 34 consecutive life sentences. They remained adamant in their desire to pursue a death sentence in 2021 after Cruz pleaded guilty to 17 counts of murder and 17 counts of attempted murder. After a six-month sentencing trial marked by delays and a chaotic jury selection process, three jurors found that the mitigating evidence outweighed the aggravating evidence. As in the vast majority of U.S. states, Florida law requires a unanimous jury vote to impose a death sentence, and Cruz was sentenced to life without parole. The verdict was reminiscent of the outcome in the Aurora, **Colorado** movie theater mass shooting case in 2015, in which three jurors found that the evidence of James Holmes’ serious mental illness warranted a life verdict. Twelve people were killed and dozens wounded in that shooting.

Cuyahoga County (Cleveland), **Ohio** prosecutors sought the death penalty for Armond Johnson, who was convicted of murdering four people, including two children. Though prosecutor Michael O’Malley said, “His callous actions demand that he face the ultimate punishment,” the jury found that the aggravating circumstances in the case did not outweigh Johnson’s mitigating circumstances. Johnson’s lawyers presented evidence of his mental illness and the chronic neglect, trauma, and extreme poverty to which he was constantly subjected throughout his childhood. Johnson was sentenced to life without parole. The case was the second time in 2022 in which a Cuyahoga County jury rejected a death sentence — in February, a life sentence was imposed in the capital trial of Kodi Gibson.

Also in Ohio, prosecutors reached a deal to take the death penalty off the table in the capital prosecution of George Wagner IV in the so-called “Pike County massacre.” Wagner and his family members were charged with the murders in several different locations of eight members of the Rhoden family. The murders resulted in the largest and most expensive homicide investigation in Ohio history. After a 13-week capital trial, George Wagner was convicted of 8 counts of murder on November 30. However, he will formally be sentenced to life on December 19 pursuant to a plea deal between prosecutors and Wagner’s brother Jake, in which Jake pleaded guilty and agreed to testify against his other family members if the death penalty was not imposed against them. Their father, Billy Wagner, faces a capital trial in 2023, but also will not be sentenced to death pursuant to the plea deal.



On August 19, the eighth anniversary of the murder of journalist James Foley, a federal district judge in Virginia [imposed](#) eight life sentences on Islamic State militant El Shafee Elsheikh. Elsheikh, one of the so-called “ISIS Beatles,” was convicted of murdering Foley, journalist Steven Sotloff, and humanitarian workers Peter Kassig and Kayla Mueller, who were kidnapped and held hostage in Iraq. Federal prosecutors dropped pursuit of the death penalty in order to secure British cooperation in the investigation of Elsheikh and his co-defendant, Alexandra Kotey, both of whom grew up in Britain. Kotey was sentenced to life in 2021. Diane Foley, the mother of James Foley and a leading advocate for Americans held hostage abroad, hailed the life sentence as “a huge victory” and “a very important deterrent.” She told Fox News that she considered a life sentence “a much more just sentence” than the death penalty. “These young men will have to spend the rest of their lives thinking about what they did and why they’ve lost their freedom, country, and family,” she said.



## SUPREME COURT

- The U.S. Supreme Court continued to withdraw the federal courts from regulation of death-penalty cases, limiting access to federal habeas corpus review for death-row prisoners, vacating lower court rulings that had halted executions, and declining to review death-penalty cases that presented serious constitutional issues
- The Court's controversial ruling in *Shinn v. Ramirez* elevated concerns for "state's rights" and the finality of state court judgments over issues of executing the innocent, ineligibility for the death penalty, and redressing defective state-court process
- Justice Ketanji Brown Jackson became the first Black woman and first public defender to serve on the U.S. Supreme Court

The U.S. Supreme Court continued its efforts throughout 2022 to weaken or withdraw federal-court regulation of death penalty cases. Those efforts were manifest both in court decisions severely limiting prisoners' access to federal habeas corpus review to develop evidence of innocence, ineligibility for the death penalty, or constitutional violations at trial or sentencing and in refusals to review death-penalty issues that presented significant claims of constitutional violations.

The Court also continued its pattern of summarily intervening to permit executions in cases in which the lower federal courts had issued injunctions or stays of execution necessary to adjudicate significant legal issues and in uniformly denying defense applications for stays of execution. Since the death of **Justice Ruth Bader Ginsburg** and the retirement of **Justice Anthony Kennedy**, the Court has not granted a single stay of execution concerning the constitutionality of a death-row prisoner's conviction or sentence. The only execution stays it has granted have been in cases implicating the extent to which a religious figure may provide spiritual comfort to a prisoner in the death chamber during his or her execution.

2022 also saw the retirement of **Justice Stephen Breyer**, the Court's most persistent death-penalty skeptic and the historic confirmation of **Justice Ketanji Brown Jackson**, the first African American woman and first federal public defender to serve as a justice on the Court.

The Court's most significant death-penalty ruling of 2022 came in the consolidated cases of *Shinn v. Ramirez* and *Shinn v. Jones*, with a decision that severely limited access to the federal courts for state prisoners who had been provided a succession of ineffective lawyers in state court. **David Ramirez** and **Barry Jones** had been sentenced to death in separate proceedings in **Arizona**, and each argued during federal habeas review that they were entitled to present evidence of their counsel's ineffectiveness for the





Barry Jones

first time in federal court because their state post-conviction counsel had also provided them ineffective representation in failing to investigate and raise that issue.

Jones argued that trial and post-conviction counsel had both failed to develop evidence of his innocence. Ramirez argued that trial and post-conviction counsel had both failed to develop mitigating evidence that could have resulted in a life sentence and evidence of his intellectual disability that could have established his constitutional ineligibility for the death penalty. In 2012, a 7-2 majority of the Court had ruled in *Martinez v. Ryan* that state prisoners could challenge the ineffectiveness of trial counsel in federal habeas court for the first time if they had been denied effective assistance of counsel in state post-conviction proceedings. Consistent with the rulings of every federal appeals court that had previously interpreted *Martinez*, the U.S. Court of Appeals for the Ninth Circuit ruled that a federal evidentiary

forum was available to the petitioners on the claim of trial counsel's ineffectiveness, once they had shown post-conviction counsel's ineffectiveness in failing to raise the issue in state court. The Ninth Circuit affirmed a district court finding that Jones had been provided serially ineffective representation concerning his innocence, and upheld the lower court ruling vacating his conviction and granting him a new trial. In Ramirez's case, the circuit court ordered an evidentiary hearing to determine the merits of his trial ineffectiveness claim. Arizona filed a combined petition for certiorari asking the Supreme Court to jointly review the case and reverse the circuit's rulings.

Writing for the conservative majority in *Ramirez and Jones*, **Justice Clarence Thomas** called federal judicial intervention to overturn a state prisoner's conviction and sentence an "intru[sion] on state sovereignty ... [that] overrides the State's sovereign power to enforce societal norms through criminal law." Although *Martinez* permitted a habeas petitioner to raise a claim of trial counsel's ineffectiveness that state post-conviction counsel had failed to investigate and present, Thomas wrote: "a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state-court record based on ineffective assistance of state postconviction counsel." Joined by Justice Stephen Breyer and **Elana Kagan**, **Justice Sonia Sotomayor** issued a scathing dissent describing the decision "perverse" and "illogical." The ruling, she wrote, "eviscerates" controlling case precedent and "mischaracterizes" other decisions of the Court. "The Court," Sotomayor said, "arrogates power from Congress[,] ... improperly reconfigures the balance Congress struck in the [habeas amendments] between state interests and individual constitutional rights," and "gives short shrift to the egregious breakdowns of the adversarial system that occurred in these cases, breakdowns of the type that federal habeas review exists to correct." The decision, she cautioned, would "doom many meritorious trial-ineffectiveness claims" that otherwise would result in relief.

The decision also produced [harsh reactions](#) from legal scholars, who blasted it as "nightmarish" and "an abomination."

The Court further limited access to federal review in *Shoop v. Twyford*, narrowing the circumstances in which a habeas petitioner can obtain the assistance of a federal court in developing evidence. **Ohio** death-row prisoner **Raymond Twyford**'s habeas counsel sought to develop evidence to support a claim that his lawyer at trial had been ineffective in failing to investigate or develop evidence of neurological impairments he suffered after a failed suicide attempt when he was 13 years old. During federal habeas review, counsel asked the court for an order to transport Twyford to a medical facility for neurological imaging as part of their investigation into his mental competency and his trial counsel's ineffectiveness. The district court granted Twyford's motion, and Ohio prosecutors appealed. The U.S. Court of Appeals

for the Sixth Circuit agreed with Twyford that the district court had jurisdiction to issue the transport order. Rather than answer that question, the Supreme Court instead held that the transportation order had been inappropriate because Twyford did not make a specific showing that the evidence would be admissible under the restrictions imposed by the Anti-Terrorism and Effective Death Penalty Act (AEDPA).

The Supreme Court's most significant substantive death penalty ruling in 2022 was its March 4 decision in *United States v. Tsarnaev*, reimposing the death penalty on federal death row prisoner **Dzhokhar Tsarnaev** for his role in the Boston Marathon bombing. The U.S. Court of Appeals for the First Circuit had overturned Tsarnaev's death sentence, holding that the trial judge had improperly prevented Tsarnaev's lawyers from questioning jurors about the nature of their exposure to pretrial publicity and unconstitutionally excluded mitigating evidence of a murder committed by Tsarnaev's violent, radicalized older brother that Tsarnaev argued would show that he had acted under his brother's dominating influence. In a 6-3 partisan-line ruling, Justice Thomas reversed the circuit court, asserting that trial court had not abused the broad discretion afforded district court judges in questioning jurors and in admitting evidence.

In *Nance v. Ward*, the Court faced a narrow procedural question about the manner in which death-row prisoner **Michael Nance** should have challenged the constitutionality of **Georgia's** method of execution. Historically, such challenges — which do not contest the constitutionality of the death sentence itself — have been brought under the federal civil rights act, and that is what Nance did. However, recent U.S. Supreme Court case precedent requires prisoners to offer an alternative method for their own execution before they may challenge the state's intended method, and Georgia argued that the designation of any method other than lethal injection — the sole method authorized under its state law — constituted a challenge to the prisoner's underlying sentence that must be brought under the habeas corpus statute. If that were the case, every prisoner whose habeas corpus petition had been denied before the issuance of a death warrant would be time barred from challenging the execution method.

Nance suffers from a medical condition that has so compromised his veins that the only way to perform an execution by lethal injection would be by cutting into his neck to insert an intravenous line. So instead of lethal injection, he designated firing squad as his designated alternative method.

In a 5-4 decision in which **Chief Justice John Roberts** and **Justice Brett Kavanaugh** joined the Court's three liberal justices, the Court ruled in Nance's favor, retaining a single procedural mechanism for method-of-execution challenges. Writing for the Court, Justice Kagan noted that to do otherwise would permit a state to avoid challenges to the constitutionality of its execution protocol, no matter how blatantly tortuous, by designating it as the only legally authorized method of execution.

In *Ramirez v. Collier*, the Court stayed the execution of **John Ramirez** in September 2021 to consider his challenge to **Texas'** refusal to permit his pastor to be present in the execution chamber, lay hands on him, and pray out loud during his execution. Although Texas subsequently agreed to allow his spiritual advisor in the execution chamber, it denied Ramirez's requests for physical touch and audible prayer. In an 8-1 decision, the Court found that Ramirez was likely to succeed on his religious rights claim and returned the case to the lower courts to fully adjudicate his claim. Texas and Ramirez came to an agreement on what his pastor was permitted to do in the execution chamber and he was executed October 5.

In 2022, the Court denied every application for a stay of execution filed by a death-row prisoner and intervened in multiple cases to vacate stays of execution or injunctions issued by the lower federal courts.

**Matthew Reeves**, an intellectually disabled death-row prisoner in **Alabama**, challenged his execution by lethal injection arguing that he would have designated execution by nitrogen hypoxia but for the Alabama Department of Corrections' failure to explain a form ADOC had distributed requiring prisoners to elect a method of execution. That failure, he argued violated his rights under the Americans with Disabilities Act. The U.S. District Court for the Middle District of Alabama determined that Reeves



was likely to prevail on his claim and granted him a preliminary injunction on January 7, 2022 barring Alabama from executing him “by any method other than nitrogen hypoxia before his [Americans with Disabilities Act] claim can be decided on its merits.” The U.S. Court of Appeals for the Eleventh Circuit unanimously affirmed that injunction on January 26, just one day before his scheduled execution. In a 5-4 ruling issued after the execution was scheduled to begin, the Court vacated the injunction and Reeves was executed. **Justice Amy Coney Barrett** and the three liberal justices voted to leave the injunction in place.

In a dissenting opinion joined by Justices Breyer and Sotomayor, Justice Kagan wrote: “Four judges on two courts have decided — after extensive record development, briefing, and argument — that Matthew Reeves’ execution should not proceed as scheduled tonight. The law demands that we give their conclusions deference. But the Court today disregards the well-supported findings made below, consigning Reeves to a method of execution he would not have chosen if properly informed of the alternatives.”

The Court also issued after-hours orders vacating stays or injunctions pending further litigation in two other cases, clearing the path for Alabama to attempt the failed executions of **Alan Miller** and **Kenneth Smith**. On September 19, the district court [issued](#) a preliminary injunction enjoining Alabama from executing Miller “by any method other than nitrogen hypoxia.” The Court found that “Miller has presented consistent, credible, and uncontroverted direct evidence that he submitted an election form in the manner he says was announced to him by the [ADOC]” along with “circumstantial evidence” that ADOC lost or misplaced his form. A divided panel of the U.S. Court of Appeals for the Eleventh Circuit upheld the injunction on the afternoon of Miller’s execution. At about 9:15 p.m. Central Time, the U.S. Supreme Court vacated the injunction, leaving Alabama approximately 2½ hours to carry out the execution before the warrant expired. Justice Jackson joined Justices Sotomayor, Kagan, and Barrett in dissent. The U.S. Court of Appeals for the Eleventh Circuit granted Smith a stay of execution on November 17, 2022, the day he was scheduled to be put to death. In a 6-3 party-line vote, the Court [vacated the stay](#).

This term also introduced a new voice to the Court, with the historic June 30 confirmation of Ketanji Brown Jackson as an Associate Justice of the U.S. Supreme Court. Justice Jackson fills the judicial spot on the Court left vacant by the retirement of Justice Breyer, for whom she previously clerked. Justice Jackson is the first former federal public defender to serve on the Court, the first justice since Thurgood Marshall to have significant experience representing indigent criminal defendants, and the first Black woman to serve as a justice in the Court’s history.

Justice Jackson issued her first written opinion as a member of the Supreme Court in dissenting from the Court’s denial of certiorari review in [Chinn v. Shoop](#), death-row prisoner **Davel Chinn**’s appeal of the **Ohio** federal courts’ denial of his claim that prosecutors unconstitutionally withheld evidence favorable to the defense. Both the Ohio federal district court and the U.S. Court of Appeals for the Sixth Circuit agreed that the prosecution had improperly withheld the evidence from the defense, but they denied relief on his claim asserting that the withheld evidence had not been material to his conviction.



*U.S. Supreme Court Justice Ketanji Brown Jackson*

The Supreme Court declined to review the case, but Justice Jackson, joined by Justice Sotomayor, dissented, writing:

“There is no dispute that, during the capital trial of petitioner Davel Chinn, the State suppressed exculpatory evidence indicating that the State’s key witness, Marvin Washington, had an intellectual disability that may have affected Washington’s ability to remember, perceive fact from fiction, and testify accurately. When affirming on direct appeal, the Ohio Supreme Court said “[i]f the jury accepted Washington’s testimony, the jury was certain to convict [Chinn], but if the jury did not believe Washington, it was certain to acquit [Chinn] of all charges.” Similarly, the Ohio Court of Appeals said that Washington was the “key” and “main” witness against Chinn. Yet, when confronted during state postconviction proceedings with the State’s suppression of evidence that would have substantially impeached this key witness, the Ohio courts suddenly concluded that evidence was not “material” enough to have affected the trial.”

Saying that the lower federal courts had applied the wrong legal standard in upholding the state court’s ruling, Jackson wrote: “Because Chinn’s life is on the line, and given the substantial likelihood that the suppressed records would have changed the outcome at trial based on the Ohio courts’ own representations, I would summarily reverse to ensure that the Sixth Circuit conducts its materiality analysis under the proper standard.”

The Court’s refusal to review the *Chinn* case illustrates another trend in the Court’s decisions in 2022, repeatedly denying certiorari review in death-penalty cases in which state and federal court had denied relief on significant constitutional claims. Those cases include that of Texas death-row prisoner **Andre Thomas**, a severely mentally ill Black man convicted of murdering his wife, who was a white woman, her daughter from a previous relationship, who was white, and their son, who was biracial. Thomas challenged his conviction and sentence because his trial lawyer agreed to impanel three jurors who expressed clear bias against interracial marriage or thought interracial couples should not have children, without so much as asking them any questions about their biases. The Court voted 6-3 to deny certiorari.

The Court also refused to review a significant constitutional question raised by **Rodney Young**, who was sentenced to death in Georgia despite agreement by mental health experts that he met the medical requirements for intellectual disability. For medical purposes, proof of the disorder requires a diagnosis to a reasonable degree of medical certainty. But Georgia requires capital defendants and death-row prisoners to prove intellectual disability beyond a reasonable doubt before they can be ineligible for the death penalty. No other state has such an extreme requirement, and no one convicted of committing a murder in Georgia has ever been able to meet that standard. But despite the extreme outlier status of Georgia’s rule, the Court denied certiorari review for Young.

The Court’s refusal to grant a stay of execution to **Missouri** death-row prisoner **Kevin Johnson** also raised questions regarding its commitment to fair process and the enforcement of constitutional protections against racial bias. A special prosecutor appointed by a St. Louis County trial court had found that Johnson’s death sentence was a product of discriminatory prosecutorial practices by former county prosecutor Robert McCullough. Based on those findings, the special prosecutor sought to stay Johnson’s execution and overturn his death sentence under a Missouri statute that mandated an evidentiary hearing when the prosecution presented evidence of prejudicial constitutional error. The trial court nevertheless refused to stay Johnson’s execution. Scheduling oral argument in his case for the day before the execution was set to take place, the Missouri Supreme Court also declined to grant a stay, without ruling on the merits of the special prosecutor’s assertions. The U.S. Supreme Court then declined to stay Johnson’s execution to permit him to have his day in court on the discrimination claims, and he was executed November 29.

In a [dissent](#) issued the day after Johnson's execution and joined by Justice Sotomayor, Justice Jackson wrote that the Missouri Supreme Court had "flouted the plain language" of the state law that required an evidentiary hearing when a prosecutor seeks to vacate a conviction based upon evidence "demonstrating a 'constitutional error at the original trial ... that undermines the confidence in the judgment.'" Johnson's execution, Jackson wrote, "irrevocably mooted our consideration of his due process claim, and Missouri would have suffered no discernible harm if a stay had issued, as a State has no legitimate interest in carrying out an execution contrary to [its laws] or due process." As a result, "new evidence relating to the trial prosecutor's racially biased practices and racially insensitive remarks ... will not be considered on the merits by any court, much less the one that was supposed to base its conclusions about the validity of Johnson's conviction on all such evidence, per the statutory mandate."

Several other capital cases that are awaiting Supreme Court decision at the end of 2022 may serve as bellwethers on how far the Court is willing to go to limit defendants' access to federal review.

In November, the Supreme Court heard argument in *Cruz v. Arizona*, a case in which the Arizona courts had refused **John Cruz**'s request to instruct his jury that he would not be eligible for parole if spared a death sentence. Although the Supreme Court ruled in *Simmons v. South Carolina* in 1994 that a defendant has a due process right to inform a capital sentencing jury of his or her parole ineligibility if future dangerousness has been placed in issue, Arizona courts routinely prohibited capital defendants from informing their juries of that fact. State courts justified this practice on the grounds that the governor could grant clemency to a defendant who was otherwise sentenced to life without parole, so technically a sentence of life without parole was not absolute. In 2016, in *Lynch v. Arizona*, the Supreme Court summarily reversed Arizona's interpretation of the law, finding it flatly contrary to *Simmons*.

After *Lynch*, Cruz tried to again present his claim to Arizona's courts, citing *Lynch* as a new case that changed Arizona law. However, the state court, departing from prior precedent that consider such decisions to constitute a change in the law, ruled that Cruz's claim was procedurally barred because *Lynch* simply reaffirmed prior law. The question before the Supreme Court is whether the state court's procedural ruling is an adequate and independent ground for its judgement.

The Court also heard argument in *Reed v. Goertz* in October, an appeal by Texas death-row prisoner **Rodney Reed** seeking DNA testing of evidence that he argues can prove his innocence. Reed's case has drawn international attention because of the strength of his innocence claim, but his Supreme Court case turns on the very narrow question of what event started the clock on his deadline to raise his claim in federal court, after Texas denied his request to test the additional DNA evidence. During his federal appeals, the U.S. Court of Appeals for the Fifth Circuit ruled that Reed was required to file his federal civil rights lawsuit within two years of the date the state trial court denied his request for DNA testing, even though his appeal of that decision was still pending in state court. By the time the case reached the Supreme Court, Texas Solicitor General Judd Stone had backed down from this position, and instead argued that Reed's time clock began to run "no later than" when the Texas Court of Criminal Appeals (TCCA) denied his initial appeal. Reed argued that the time clock did not begin to run until his appeal was final — including consideration of any petition for reconsideration of his case. His federal civil rights action was filed more than two years after the Texas Court of Criminal Appeals denied his appeal, but within two years after its denial of his request for reconsideration brought the appellate process to a close. Reed's interpretation is also the current rule in the U.S. Court of Appeals for the Eleventh Circuit, creating a conflict between the Fifth and Eleventh Circuits that the Court's decision in this case will resolve.



Rodney Reed

## –KEY QUOTES

*“For us as a Christian nation, the notion of ‘thou shall not kill’ still prevails.”*

—Papua New Guinea Prime Minister James Marape, announcing the abolition of the country’s death penalty



Papua New Guinea Prime Minister  
James Marape



Oregon Governor Kate Brown

*“It is an irreversible punishment that does not allow for correction; is wasteful of taxpayer dollars; does not make communities safer; and cannot be and never has been administered fairly and equitably.”*

—Oregon Governor Kate Brown, announcing the commutation of all 17 of the state’s death sentences

*“There was more than one casualty. More people are involved than anyone understands.”*

—Perrin Damon, former Oregon Department of Corrections spokesperson, on the impact of executions on corrections personnel

*“It’s clear that lethal injection creates a circus of suffering. ... I don’t know why they are so bad at this. But it seems they are trying to hide a pattern of dangerous, cruel, incompetence.”*

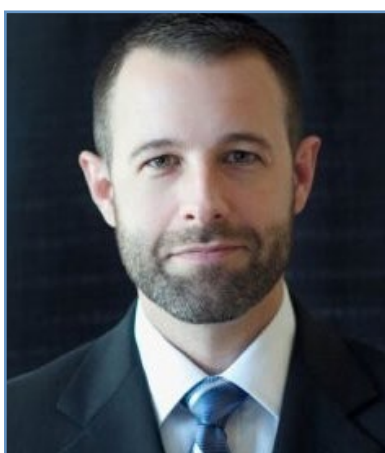
—Emory University Anesthesiologist Joel Zivot on 2022 execution failures



*“Tonight, the State of Missouri killed Kevin Johnson. ... Make no mistake about it, Missouri capitally prosecuted, sentenced to death, and killed Kevin because he is Black. ... The law is supposed to punish people for what they do, not who they are. Yet, Missouri killed Kevin because of the color of his skin. Shame on all of them.”*

—Assistant Federal Defender Shawn Nolan on the execution of Kevin Johnson, despite a court-appointed special prosecutor’s efforts to vacate his death sentence because of racial discrimination by the St. Louis County District Attorney’s Office

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Brett Farley

*“We cannot be a state that... values the sanctity of life, and, at the same time, think that we can have a system of justice that resorts to death.”*

—Brett Farley, State Coordinator, Oklahoma Conservatives Concerned About the Death Penalty, former communications director of the Oklahoma Republican Party

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*“What’s taking so long? ... Can you believe this?”*

—Arizona death-row prisoner Murray Hooper, as corrections personnel failed to set an intravenous execution line and ultimately inserted a catheter into his femoral vein near his groin

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*“We policymakers have an obligation and opportunity to speak out when there is injustice. Here, in the case of Melissa Lucio, there is clear injustice.”*

—Texas State Representative Lacey Hull (R-138) in reference to Melissa Lucio’s execution that was scheduled for April 27, 2022, which has since been stayed

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*“The opinion leaves innocent people in the nightmarish position of having no court to go to for justice.”*

—Innocence Project Executive Director Christina Swarns on the implications of the U.S. Supreme Court’s decision in *Shinn v. Ramirez*



*Christina Swarns (center), after arguing before the Supreme Court in 2017*



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The Death Penalty Information Center is a non-profit organization serving the media and the public with information and analysis on capital punishment. The Center provides in-depth reports, conducts briefings for journalists, promotes informed discussion, and serves as a resource to those working on this issue. DPIC’s Executive Director Robert Dunham and Managing Director Anne Holsinger wrote this report with assistance from DPIC’s staff. Further sources for facts and quotations are available upon request. The Center is funded through the generosity of individual donors and foundations, including the MacArthur Justice Center, the Open Society Foundations, the Tides Foundation, M. Quinn Delaney, and the Fund for Nonviolence. Funding for DPIC’s law fellow position was provided in part by the Georgetown University Law Center. The views expressed in this report are those of DPIC and do not necessarily reflect the opinions of its donors.