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Minority Whip
Ohio House District 13

Criminal Justice Committee
December 12, 2017
Sponsor Testimony HB 389

Chairman Manning, Vice Chair Rezabek, Ranking Member Celebrezze and members of the Criminal Justice Committee, thank you for the opportunity to testify on HB 389—important and timely legislation to abolish the death penalty in the State of Ohio.

In the previous General Assembly, I stood before this committee to advocate for the abolishment of the death penalty and to replace it with a life sentence without the chance for parole. Much has transpired since I last stood before this committee two years ago, and the issue of capital punishment continues to evolve. Ohio recently ended its three-year moratorium on the death penalty after continued difficulty in obtaining the drugs needed to carry out lethal injections¹. In 2014, due to this shortage, the state of Ohio administered an untested cocktail of pharmaceuticals on death row inmate, Dennis McGuire, which caused him to take 25 minutes to die while snorting and displaying “irregular breathing and gasping” all the while².

As a national trend, states have increasingly moved toward retiring the death penalty. Several states saw significant drops in their death row populations over that period while carrying out few or no executions: **Pennsylvania** dropped from 230 to 184 (no executions), **North Carolina** fell from 197 to 157 (9 executions), and **Idaho** declined by half, from 22 to 11 (2 executions)³. Twenty states, including the District of Columbia, have done away with the death penalty altogether⁴. Reasons for the abolishment in these states have included the high costs associated with the lengthily appeal processes, trouble procuring lethal-injection drugs, and a real concern for the accuracy and fairness

¹ (<http://www.cleveland19.com/story/30301061/ohio-delays-executions-until-2017-over-lack-of-lethal-drugs>)

² <https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=United+States+of+America>

³ <http://www.deathpenaltyinfo.org/node/6170>

⁴ <https://deathpenaltyinfo.org/states-and-without-death-penalty>

in sentencing especially for people of color. Opponents of the death penalty also cite religious and moral objections to the practice.

Although the United States is considered a first world country, we are one of 58 countries to retain the death penalty, along with China, Iran, Vietnam, and Cuba. We are the only Western Nation and Member of NATO that still uses the death penalty.

The Death Penalty in Ohio

In 2007, an American Bar Association review found that Ohio's system of capital punishment fell short in 93% of the guidelines set forth by the ABA to ensure fairness and accuracy in capital cases⁵. In response, Supreme Court Chief Justice Maureen O'Connor established a task force to closely examine the issue. After two years of review, the Joint Task Force to Review the Administration of Ohio's Death Penalty published a final report with 56 recommendations to improve the fairness of Ohio's death penalty system. Thirteen of the 56 recommendations center around preventing wrongful convictions.

Exonerations in Ohio

Since 1976, nine men have been exonerated from Ohio's Death Row. These nine men spent a combined 207 years incarcerated for crimes they did not commit. On average, the men exonerated from Ohio's Death Row spent over 21 years wrongfully imprisoned. Three of those exonerations happened in 2014⁶. To emphasize the point that these are innocent individuals who awaited execution for crimes they did not commit.

Ricky Jackson, Kwame Ajamu, and Wiley Bridgeman are free men today, when just last year these men were acquitted of the charges against them and re-entered society upon their exonerations.

Race Disparity and Geographic Bias

Where a crime takes place in Ohio can play a significant role in the sentence the accused receives. The American Bar Association reports that 56% of the death row population comes from just five counties⁷. Cuyahoga County has the highest number of capital indictments. My home county represents 11.09% of the State's population, but produces 36.6% of the state's capital indictments. Judges and juries are not permitted to consider a victim's race in death penalty cases, but data

⁵ American Bar Association, Death Penalty Due Process Review Project, "Evaluating Fairness and Accuracy in State Death Penalty Systems: The Ohio Death Penalty Assessment Report" September 2007

⁶ <http://www.otse.org/the-death-penalty-in-ohio/the-issues/innocence-2/>

⁷ "Evaluating Fairness and Accuracy in State Death Penalty Systems: The Ohio Death Penalty Assessment Report. An Analysis of Ohio's Death Penalty Laws, Procedures, and Practices." American Bar Association. September 2007. <<http://www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/ohio/executivesummary.athcheckdam.pdf>>.

indicates that although the majority of murder victims are people of color, the majority of executions take place when a convicted murder's victim is white.

Cost to State

As local governments continue to face fiscal challenges, this legislation aims to save millions of taxpayer dollars. The extensive costs of the death penalty have led other states to end its use entirely. Colorado, California, and Nebraska included both the high costs associated with the mandatory appeal process in death penalty cases along with the costs of confining inmates on death row rather than maximum-security prisons as part of the rationale for halting the practice in their states.

The average cost of a death penalty case in **Ohio**, including execution, totals \$3 million per inmate, while the cost of the average life without parole sentence costs \$1 million⁸. A fact sheet about the monetary cost of the death penalty in Ohio has been distributed to the members of the committee for your review.

In February of 2014, the Dayton Daily News conducted a preliminary investigation into the annual costs of Ohio's entire death penalty system. The investigation concluded that \$16, 872,000 dollars go towards maintaining the death penalty every year.

- What could Ohioans do with that \$16.8 million?
 - 299 more police officers
 - A 3.75% increase in mental health funding
 - 368 more social workers
 - \$803k in services for each family of a murder victim

Conclusion:

We know more about the death penalty now than ever before. The system is broken beyond repair. Quality of legal representation, the prosecutor's decision to pursue capital sentencing, and the victim's race all affect who is put to death and who is not. **New developments in DNA evidence testing, racial disparities in sentencing, disparities in which counties can afford capital indictments, and a shortage in the drug used to carry out executions (due to the drug manufacturer's desire to remove their drug from the execution formulary) all contribute to the rationale to end the use of the death penalty.**

Ohio Supreme Court Justice Paul Pfeifer and former Ohio Attorney General Jim Petro, two primary authors of the Ohio's death penalty statute have been calling for an end to the death penalty for several years. They recognize the human errors that plague this ultimate and irreversible punishment. Many have come out publicly against the use of the death sentence such as former Ohio Supreme Court Justice, Evelyn Lundberg Stratton. She has been against the use of this punishment for mentally ill defendants but now is opposed to the death penalty all together. Jim Petro, Former Ohio Attorney General and author of *False Justice: Eight Myths that Convict the Innocent*, was quoted as stating, "We are probably safer, better and smarter to not have a death penalty". And as previously

⁸ <http://www.otse.org/deathpenalty-cost/>

mentioned, sitting Ohio Supreme Court Justice, Paul Pfeiffer now opposes the use of the death penalty and has called it the “death lottery.”

I suggest that the State of Ohio get out of the business of executing its own citizens, especially after the last failed attempt at an execution where the execution team tried for over 30 minutes to locate a viable vein on Alva Campell, a 69-year-old prisoner with serious health problems and trouble breathing⁹. Moreover, the death penalty has not shown to be an effective deterrent against violent crime, and has never resulted in the return of one murder victim to their families and loved ones.

Lawmakers would serve Ohioans well to catch up with public opinion, which increasingly favors life sentences over the use of the death penalty¹⁰. No execution brings back a loved one, and we as a society must be better than our worst criminals and our flawed system. I join a growing call to end the death penalty in our State. The New York Times opined regarding Nebraska: “votes of the Nebraska Legislature show that when lawmakers across the political spectrum can have an open, honest, and informed debate on the issue, capital punishment is quickly exposed for the immoral, ineffective, arbitrary and costly practice that it is¹¹.”

We hope to encourage such a debate in Ohio, and thank you for your consideration.

⁹ <https://www.nbcnews.com/storyline/lethal-injection/ohio-set-execute-inmate-alva-campbell-who-needs-wedge-pillow-n820956>

¹⁰ (P. Brown, "[Ohio Gov Roars Past Little Known Challenger, Quinnipiac University Poll Finds; Support For Life Options Outweighs Death Penalty](#)," Quinnipiac University, May 14, 2014). See **Public Opinion** and **Life Without Parole**.

¹¹ <http://www.nytimes.com/2015/06/14/opinion/will-nebraskas-death-penalty-come-back.html>