



Ohio Prosecuting Attorneys Association

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Senate Bill 54
Opponent Testimony
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Chairman Eklund, Vice-Chair Manning, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to offer opponent testimony on Senate Bill 54. I would like to address two of the arguments that have been put forth by proponents in support of this legislation.

First, proponents have stated that they have compromised with our Association on multiple occasions and made sufficient concessions on this legislation. The bill currently pending before you creates an Atkins-like process where a pre-trial hearing is held to determine whether a person should be excluded from the death penalty based on their mental illness. This is an improvement over the bill that was introduced during the last General Assembly. That bill created a burden shifting procedure that inexplicably would have required the prosecution to prove a negative – that the mental illness did not affect the offender’s actions. So while addressing this burden shifting issue was important, it was not an issue that should have existed in the first place and fixing it hardly amounts to real compromise. Even the Public Defender, during testimony in the House, said in response to a question about this version of the bill versus last year’s version that the current bill creates the process he would have preferred in the first place – the Atkins-like process. Along with now removing major depressive disorder, this is the extent of the proponents’ willingness to compromise with the prosecutors on a bill that fundamentally changes the death penalty in Ohio and that would be a first of its kind in the nation. We urge you to address other issues that we have consistently raised. Most importantly concerns about post-conviction relief and an undefined list of mental illnesses. But also language about the illness impacting the offender’s “rational judgment,” language about disorders attributable “solely” to the use of alcohol or drugs, and language that would make the legislation more balanced in terms of victims rights.

Second, proponents have stated that they have provided facts and statistics in support of the need for this legislation. One of our primary points of contention has been the provision of the bill that provides for post-conviction relief. We think that it is highly likely that every person on death row will apply for relief at great cost to the state in terms of time and resources and to victims in terms of terms of finality and justice. Proponents have disputed this by pointing to a Harvard “study” that indicates that only 10 – 15 people will qualify. From what I can gather, the study they refer to was published by the “Fair Punishment

Project,” an initiative of Harvard Law School’s Criminal Justice Institute.¹ There are two things in particular worth noting about this. The study examined the cases of the 26 men scheduled to be executed in Ohio from mid-2017 through 2018. It found fault with the imposition of a death sentence in 23 of those cases and raised suspicion about the other three based purely on conjecture – they admit that they “simply do not know about their backgrounds.” More importantly, the Fair Punishment Project is a project of Tides Advocacy,² who in addition to being one of the primary funders of last fall’s State Issue 1 campaign, “has been a partner in the death penalty abolition movement since 2000 with the creation of the Death Penalty Mobilization Fund” which awards grants to “activist organizations that have propelled the work to reduce executions and reform the criminal justice system, with the ultimate goal of abolishing the death penalty in the United States.”³ These are the statistics that to proponents demonstrate that this legislation won’t have the negative impact on the death penalty that we believe it will.

Finally, it has been noted that this proposal was part of “a comprehensive set of recommendations to address problems with Ohio’s capital punishment” made by the Task Force to Review the Administration of Ohio’s Death Penalty. One of the concerns that prosecutors had with that Task Force, and have with using their recommendations as justification for this legislation, is that the Task Force was not charged generally to make recommendations to address problems with Ohio’s capital punishment. They were given the narrow task of assessing whether the death penalty in Ohio is administered in the most fair and judicious manner possible and determining if the administrative and procedural mechanisms for the administration of the death penalty were in proper form or in need of adjustment. The Task Force, however, disregarded this narrow mandate and made a number of substantive recommendations that were anti-death penalty. This was one of them. The Task Force also rejected proposals that would have allowed juries, during the sentencing phase, to consider additional evidence about the offender – evidence of the impact of the crime on victims’ families and evidence of the offender’s violent criminal character.

Thank you again for the opportunity to testify. I would be happy to answer any questions.

¹ <http://fairpunishment.org/prisoners-on-ohios-execution-list/>

² <http://fairpunishment.org/about-us/>

³ <https://www.tides.org/our-community/tides-social-ventures/the-future-of-californias-death-penalty/>