



# Ohio Prosecuting Attorneys Association

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House Bill 183  
Opponent Testimony  
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Chairman LaRe, Vice-Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to provide opponent testimony today on House Bill 183 to repeal the death penalty in Ohio. Our Association is strongly opposed to abolishing the death penalty. We believe the death penalty is still an appropriate punishment for the worst-of-the-worst offenders and that discussions about repeal are not driven by public safety or with the demands of justice in mind. There is a lot of misinformation and disinformation about the death penalty that has been put forth by advocates of repeal. I'd like to spend some time responding to several of the key arguments they make.

## The Public Supports the Death Penalty

Let's start with the most basic point – the public doesn't support repeal of the death penalty and you should be highly skeptical of any polling that suggests they do. In fact, the last time the public had the opportunity to vote on the death penalty they voted to expedite the appellate process. The reason you should be skeptical is simple. Many polling questions ask people simply what they think is the better penalty for murder – the death penalty or life without parole. This is flawed because offenders who receive a death sentence are not run-of-the-mill murderers. The death penalty is only available in a limited number of circumstances where an offender is charged with aggravated murder or terrorism and where the indictment includes one or more specifications alleging aggravating circumstances. The aggravated circumstances, which are listed in R.C. 2929.04(A)(1) to (A)(10) include assassination, aggravated murder or terrorism for hire, prior conviction for purposeful killing or attempted killing, course of conduct involving purposeful killing or attempted killing of two or more persons, victim was a law enforcement officer, killing committed during kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, killing of a witness to prevent testimony or in retaliation, killing of a victim under age 13, and aggravated murder occurring during terrorism.

When pollsters distinguish between most murders and these kinds of aggravated murders that make someone eligible for the death penalty, support for the death penalty is overwhelming – 76%.<sup>1</sup> Evidence even shows that some people who say they are opposed to the death penalty when asked a generic question choose to support the death penalty under specific circumstances, most notably raping and murdering a child and killing dozens of people as part of a terrorist attack.

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<sup>1</sup> [https://www.realclearpolicy.com/articles/2021/08/16/new\\_evidence\\_confirms\\_widespread\\_support\\_for\\_the\\_death\\_penalty\\_790058.html](https://www.realclearpolicy.com/articles/2021/08/16/new_evidence_confirms_widespread_support_for_the_death_penalty_790058.html)

It is not hard to understand that level of support once you understand who we are talking about. Just in relatively recent history we're talking about people like Anthony Sowell who murdered 11 women and buried them in and around his house,<sup>i</sup> Shawn Grate who murdered 5 women across three Ohio counties,<sup>ii</sup> George Brinkman who murdered 5 people across two Ohio counties,<sup>iii</sup> Michael Madison who murdered 3 women and disposed of their bodies in garbage bags,<sup>iv</sup> Kristopher Garrett who murdered his girlfriend and then chased down and murdered her 4 year old daughter because the daughter had witnessed him murder her mother,<sup>v</sup> Joel Drain who, serving a 30-years-to-life sentence for aggravated murder, proceeded to murder his cellmate by beating him and kicking a pencil into his head,<sup>vi</sup> and Christopher Whitaker who kidnapped a 14 year old girl from her bus stop and took her to an abandoned house where he raped her, tortured her with power tools, and murdered her.<sup>vii</sup> The death penalty has to be preserved for people like this. Without it, people who commit multiple murders are essentially committing their second and any subsequent murder for free because there are no additional consequences. It completely devalues the murder of these subsequent victims and allows the perpetrator to escape justice.

### Life Without Parole Isn't Always Sufficient

It has been argued that Ohio doesn't need the death penalty due to the availability of life without parole. This argument is flawed for three reasons.

First, if life without parole is the harshest sentence available it allows people to commit "free murder." Most of the multiple murderers mentioned above were already facing a life without parole sentence when they committed their first murder. Repeal of the death penalty completely devalues the lives of their subsequent victims and the subsequent victims of any future serial killer, mass murderer, or terrorist who commits their crimes in Ohio. It completely devalues the murder of a 4 year old girl whose life was taken to prevent her from being a witness to her mother's murder. It allows people like Joel Drain to exist with impunity.

Second, while life without parole might be appropriate for most aggravated murderers, it cannot possibly protect future victims from some offenders. Simply put, there must be greater consequences for murderers who are already serving life sentences. Repeal of the death penalty in relation to these offenders places other inmates, corrections officials, and witnesses lives in danger because there are no additional consequences.

Third, there are no guarantees that we will always have life without parole. The advocates of death penalty repeal make the same arguments in favor of repealing life without parole. Not long after the Virginia Legislature voted to repeal the death penalty earlier this year, in fact before the Governor had even signed the bill, the Sentencing Project, one of the national leaders in the death penalty repeal movement, had an opinion piece in the Washington Post titled "Virginia's move to end capital punishment has a major flaw." According to the author, that flaw was that it left in place "another form of in-prison death: life without the possibility of parole." The author argues that life without parole is "riddled with many of the exact same problems as the death penalty" including that LWOP does not deter violent crime, that it is applied disproportionately, that it is too expensive, and that it is cruel and immoral.<sup>2</sup> You don't even need to look as far away as Virginia. Last year during debate on Senate Bill 256, which repealed juvenile life without parole here, the Ohio Justice and Policy Center, one of the proponents of House Bill 183, argued that "Ohio could save significant resources by adopting S.B. 256" and that the "costs associated with JLWOP sentences are astronomical." Those who are touting the public safety benefits of life without parole today to justify repeal of the death penalty will be opponents of life without parole tomorrow.

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<sup>2</sup> [https://www.washingtonpost.com/opinions/local-opinions/virginia-capital-punishment-end-flaw/2021/03/11/8ec86348-802b-11eb-ac37-4383f7709abe\\_story.html](https://www.washingtonpost.com/opinions/local-opinions/virginia-capital-punishment-end-flaw/2021/03/11/8ec86348-802b-11eb-ac37-4383f7709abe_story.html)

### The Argument for Cost Savings is Inflated

Advocates of death penalty repeal argue that repeal is the fiscally responsible thing to do given the availability of life without parole sentences. Specifically, it has been argued that the cost of a death sentence is around \$3 million while the cost of a life without parole sentence is around \$1 million and that Ohio would save \$108 million if the state weren't pursuing the 36 pending capital cases that are currently under indictment. This is what most people would call "fuzzy math." First, I think if we explored where the \$3 million number comes from we'd find that a lot of the costs are fixed costs that would not be saved by repeal. Second, according to the Public Defender's own testimony only 7% of death penalty indictments actually result in a death verdict. If this holds true, that means 2 – 3 of the current 36 indictments will result in a death sentence with a cost that is nowhere near \$108 million. Third, the \$108 million figure is presented as if it would be a one-time savings that Ohio would realize this year when the reality is that the cost of these sentences, just like the total cost of life without parole sentences, is spread out over many years and is generated primarily by endless appeals and litigation undertaken by those who are now complaining about the expense. Assuming for the sake of argument that one death penalty case does cost \$2 million more than a life without parole case and the average length between a death sentence and an execution is 17 years, that means the state would save about \$118k per year per death sentence or 0.00016% of the State's \$72 billion operating budget. Repealing the death penalty is a strange place to cut costs in light of this and is especially strange since we are talking about ensuring that a small group of particularly heinous murderers are prevented from harming anyone else ever again.

Finally, much of the expense and delay that surrounds the death penalty is precipitated by the same people who are now arguing that the death penalty is too expensive and too inefficient. While we should and do give death penalty defendants super due process, a lot of the endless litigation and delay is unnecessary to protect their rights and we should not allow death penalty opponents to benefit from an argument that the death penalty is too costly and inefficient when they are largely responsible for the cost and inefficiency.

### Conclusion

The idea of capital punishment is embedded in the Ohio Constitution, it is embedded in the United States Constitution, and it has consistently been held to be constitutional. The last time Ohioans had the chance to vote on capital punishment they voted to expedite it. On top of all of that, we are in the midst of an historic rise in violent crime with many of our major cities setting records in terms of homicides. I cannot think of a worse time to abolish the death penalty for the worst-of-the-worst violent offenders. Ohioans and our collective public safety would be better served by a discussion of how to resume executions and how to reduce unnecessary delay. Given all of this and the importance of the death penalty in removing the most dangerous murderers from society, it is our position that the General Assembly should put this to a vote of the people. Proponents of repeal say that 60% of Ohioans support repeal. I can't imagine then what the objection would be to putting this to a vote. If on the other hand, as we believe, Ohioans still support the death penalty then we owe it to them to find a way forward. Either way, the voters should be given a direct say on what they want.

Thank you for the opportunity to provide opponent testimony. I would be happy to answer any questions.

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From the Ohio Attorney General's 2020 Capital Crimes Annual Report:

<sup>i</sup> **Anthony Sowell**. Between June 2007 and September 2009, Anthony Sowell murdered eleven women: Tonia Carmichael, Nancy Cobbs, Tishana Culver, Crystal Dozier, Telacia Fortson, Amelda Hunter, Leshanda Long, Michelle Mason, Kim Yvette Smith, Janice Webb, and Diane Turner. Many of the women had died as a result of strangulation, and were found in states of undress. (Sowell received the death penalty for all eleven victims.)

<sup>ii</sup> **Shawn Grate**. Between 08/16/16 and 09/13/16, Grate kidnapped and murdered 29-year-old Elizabeth Griffin and 43-year-old Stacy Hicks (aka Stacey Stanley) in an Ashland County home. Grate admitted to strangling the women to death. Ms. Griffin was found bound in an upstairs bedroom closet under dirty clothes, and Ms. Hicks was found bound in the basement also covered in clothing. Grate confessed to both murders and that he had also videotaped himself raping Ms. Hicks. Grate was also convicted of kidnapping and raping another woman, "Jane Doe," who managed to escape from the same house where the bodies of Ms. Griffin and Ms. Hicks were found. (Grate received the death penalty for both victims.) (Note: Grate was convicted of the murders of Rebekah Leicy and Candace Cunningham in Richland County, as well as Dana Lowrey in Marion County, but did not receive the death penalty for those victims.)

<sup>iii</sup> **George Brinkman**. On 06/10/17, Brinkman murdered 45-year-old Suzanne Taylor and her daughters, 21-year-old Taylor Pifer and 18-year-old Kylie Pifer, in their North Royalton home. Brinkman forced Suzanne and her daughters to lie on the bed next to one another at knifepoint, and ordered Kylie to tie up Suzanne and Taylor with zip ties. Brinkman stabbed Suzanne several times with the knife and cut her throat. He then smothered Taylor to death with a pillow and strangled Kylie to death with a phone charging cord. Brinkman later confessed to all three murders. (Brinkman received the death penalty for all 3 victims.) On 06/11/17, George Brinkman murdered Rogell and Roberta John in their Lake Township home. Brinkman had been dog-sitting for the Johns while they were on vacation. When they returned home, an argument over the care of the dog ensued. Brinkman, armed with Rogell's gun which Brinkman had earlier retrieved and loaded, ordered the Johns to a bedroom. He then shot Rogell to death before severely beating Roberta and shooting her in the head. Brinkman then stole money before fleeing. Brinkman confessed to these two murders. (Brinkman received the death penalty for both victims.)

<sup>iv</sup> **Michael Madison**. Between October 2012 and July 2013, Michael Madison murdered three women: 28-year-old Shetisha Sheeley, 38-year-old Angela Deskins, and 18-year-old Shirellda Terry. Madison lured each victim to his apartment in East Cleveland, strangled them to death, and wrapped their bodies in multiple layers of garbage bags before disposing of them near his apartment. Madison later confessed to killing Ms. Sheeley and to moving Ms. Terry's body out of his apartment. (Madison received the death penalty for all three victims.)

<sup>v</sup> **Kristopher Garrett**. On the morning of 01/05/18, Garrett murdered his ex-girlfriend, 34-year-old Nicole Duckson, and their 4-year-old daughter, Kristina Duckson, in the backyard of Nicole's Columbus home. Garrett had stabbed Nicole more than 40 times with a hunting knife because he was angry with her about an email she sent indicating he was behind on his child support. Garrett then stabbed Kristina more than 30 times because she had witnessed Garrett murder her mother. (Garrett received the death penalty only for Kristina's murder.)

<sup>vi</sup> **Joel Drain**. On 04/13/19, Drain, an inmate serving a life sentence for aggravated murder at the Warren Correctional Institution, murdered inmate Christopher Richardson. Drain admitted he initially intended to murder another inmate, but changed his mind and decided to kill Richardson. Drain hit Richardson with a fan multiple times, attempted to put a pencil in his eye, and attempted to strangle him with a cord. Richardson died as a result of his injuries. Drain confessed to the murder.

<sup>vii</sup> **Christopher Whitaker**. On 01/26/17, Whitaker kidnapped, raped and murdered 14-year-old Alianna DeFreeze. Video surveillance showed Whitaker approaching Alianna and then leading her across a field towards the house in which her body was located three days later. Police located Alianna's mostly nude body in a room of the house, but her clothing and a condom wrapper were found in another room. DNA evidence found inside her body matched Whitaker, and Alianna's DNA was found on tools and other items seized from the home, including a drill, screwdriver, knives, a hammer, and a nut driver. Whitaker confessed to murdering Alianna; however, he claimed he blacked out, and had no recollection of inflicting the fatal injuries.