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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, on behalf of Cuyahoga County Prosecuting Attorney Michael C. O'Mally, I am Assistant Prosecuting Attorney Saleh Awadallah. I thank you for the opportunity to provide opponent testimony today on House Bill 183 to repeal the death penalty in Ohio. The Cuyahoga County Prosecutor's Office is opposed to the repeal of the death penalty. Ohioans have historically supported the death penalty for the "worst of the worst" offenders.

Instead, House Bill 183 sends a message to serial killers, mass murderers and child killers in Ohio- no matter how heinous and repugnant your crime is to society- your punishment will be on par with anyone else committing an aggravated murder in Ohio.

In an era of mass fatal shooting incidents House Bill 183 sends a clear message: murder one or one hundred the punishment is the same.¹

For a foreign or domestic terrorist that causes massive loss of life, destruction and mayhem House Bill 183 puts them in the same category as someone who murders a person during a personal dispute.

Not all murders in Ohio are eligible for the death penalty under the current law. Only offenders charged with aggravated murder and one (or more) of ten different aggravating circumstance specifications are charged with a capital offense. The aggravating circumstance specifications include, for example, where the offender killed or attempted to kill multiple people, the victim was a child under the age of 13, the victim was a law enforcement officer, terrorism, where a witness was killed to prevent testimony or the murder happened during specific violent offenses.

In Cuyahoga County, a Capital Review Committee (CRC) made up of a cross-section of veteran prosecutors meet to review death penalty eligible cases before capital indictment. The CRC thoroughly reviews the facts of the case, the position of the

¹ www.cnn.com/2021/04/18/us/mass-shootings-since-march-16/index.html

victim's family, and any known potential mitigation. Defense counsel can also present mitigation or other information to the CRC for consideration. The CRC will also review a case after capital indictment to ensure that only the worst of the worst proceed as a death penalty trial.

This process is working in Cuyahoga County. Since 2012, Cuyahoga County has pursued the death penalty in less than two percent of indicted aggravated murder cases. And in the cases where the death penalty is pursued, few would argue that serial killers Anthony Sowell and Michael Madison are not deserving of the ultimate punishment. Nor could many say that the death penalty is not appropriate for multiple murderers like Denny Obermiller, George Brinkman, Joseph McAlpin, or Matthew Nicholson. And offenders like Christopher Whitaker—who abducted, raped, and tortured a 14-year-old girl who was on her way to school—are a clear example of who the legislature had in mind when they drafted R.C. 2929.04.

Once indicted with a capital offense, offenders are also immediately provided with additional protections that are not available for other offenses. For example, any offender charged with a capital offense is entitled to the appointment of counsel consistent with the Ohio Supreme Court's Rules of Appointment of Counsel in Capital Cases.² Under the Rules, an attorney that represents an indigent defendant in a capital case must be certified through the Commission on Appointment of Counsel in Capital Cases.³ Attorneys are only certified for lead trial counsel once they have at least five years of criminal litigation or appellate experience, receive ongoing legal training, and are familiar with common areas of forensic investigation.⁴

The “super due process” continues throughout the trial and appellate process. Capitally charged offenders frequently obtain the services of a defense investigator, a mitigation specialist, and a variety of different experts. In addition, the Ohio Rules of Criminal Procedure were amended in 2017 to add Crim.R. 42 which provides additional protections in capital cases, including open discovery both before and after conviction. Ohio's postconviction relief statute was similarly amended to provide broader rights to defendants who are sentenced to death.⁵ In addition to postconviction actions, defendants sentenced to death can immediately take a direct appeal to the Ohio Supreme Court. In addition to any claims a defendant raises on appeal, the Court must conduct an independent reweighing to determine the propriety of the death sentence.

² <https://www.supremecourt.ohio.gov/Boards/capitalCases/capitalCases.pdf>

³ Appt.Coun.R. 3.01(A)

⁴ Appt.Coun.R. 3.02. Attorneys certified for trial co-counsel must have at least three years of criminal litigation or appellate experience, receive ongoing legal training, and be familiar with common areas of forensic investigation. Appt.Coun.R. 3.03.

⁵ R.C. 2953.21

Ohioans have time and time again supported capital punishment for the worst of the worst-serial killers, mass-murderers and child-killers.⁶ House Bill 183 eliminates the ability of criminal justice stakeholders- the families of the victims, the prosecutors, and the juries- to consider a punishment that would more comenserate with the crime.

During the individual *voir dire* process voters, serving as jurors, are questioned as to their views on the death penalty. Time and time again jurors support the death penalty for the worst of the worst. It is these same voters that should be given the ultimate say on the future of capital punishment in Ohio.

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

⁶ Since 2017 the Cuyahoga County Prosecutors Office has pursued the death penalty in five cases. And in Ohio's most diverse and liberal county, the jury and/or the courts have imposed the death penalty in all five cases.