

**Testimony Submitted to the
Ohio House**

Criminal Justice Committee

**Hearings on HB 183 –
Repealing the death penalty.**

November 18, 2021

Columbus, Ohio

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INTRODUCTION

Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for the opportunity to testify regarding House Bill 183, which would abolish the death penalty in the State of Ohio.

My name is Ngozi Ndulue, and I am the Deputy Director of the Death Penalty Information Center.¹ DPIC is a national non-profit organization based in Washington, D.C. that serves the public by providing information and analysis on capital punishment.² DPIC does not take a position for or against the death penalty itself, but we are critical of the way in which it is administered. Our goal today is not to tell you how to vote on HB 183, but to serve as a resource and to provide you with a national perspective on issues that we believe are highly relevant to your vote.

In my testimony, I hope to provide you with data and context that will help you make an informed decision about this legislation. I would be happy to answer any questions that members of the committee may have at any time, either today or by later correspondence.

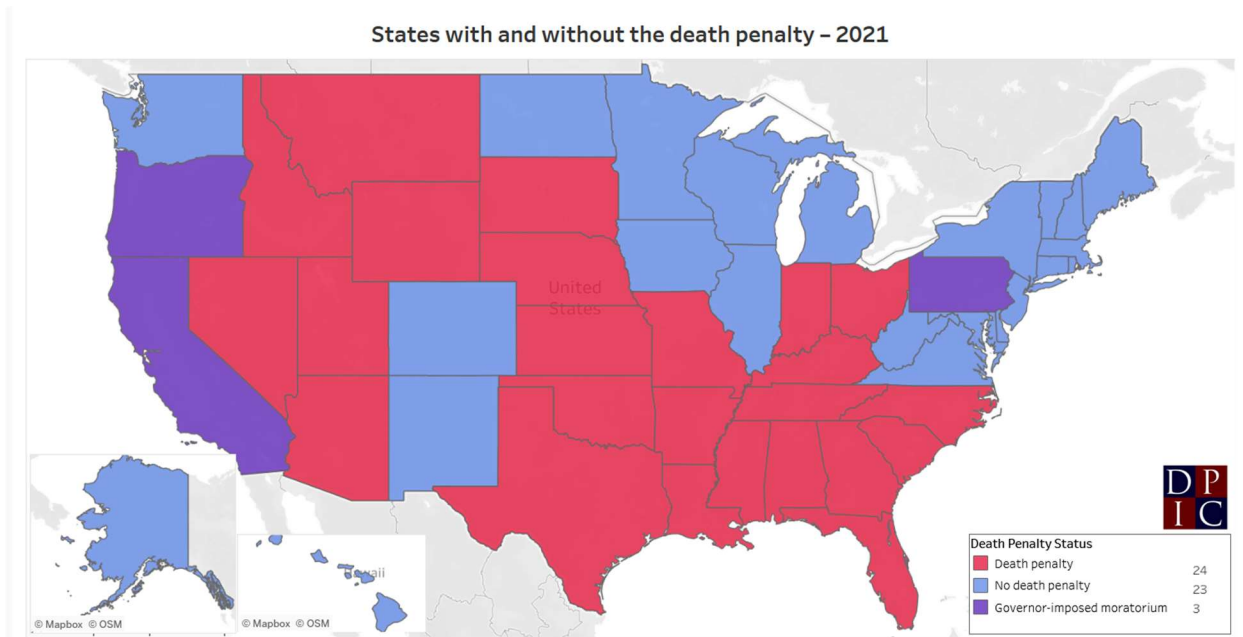
NATIONAL CONTEXT

The death penalty is in a period of historic decline across the United States. There have been fewer than 30 executions and 50 new death sentences in the U.S. in each of the last six years, the fewest number of new death sentences imposed in any comparable period since states began re-enacting death penalty statutes in 1973

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² Our website is one of the most widely used by those seeking information on the death penalty. The Library of Congress has chosen it as part of its archive on this issue. Justices of the United States Supreme Court and state supreme courts have cited the website as an authoritative source of death penalty information.

and the fewest number of executions carried out by states at any time since executions resumed in earnest in the 1980s. New death sentences are down by more than 85% since the mid-1990s. Executions have fallen by 75% since 1999.³

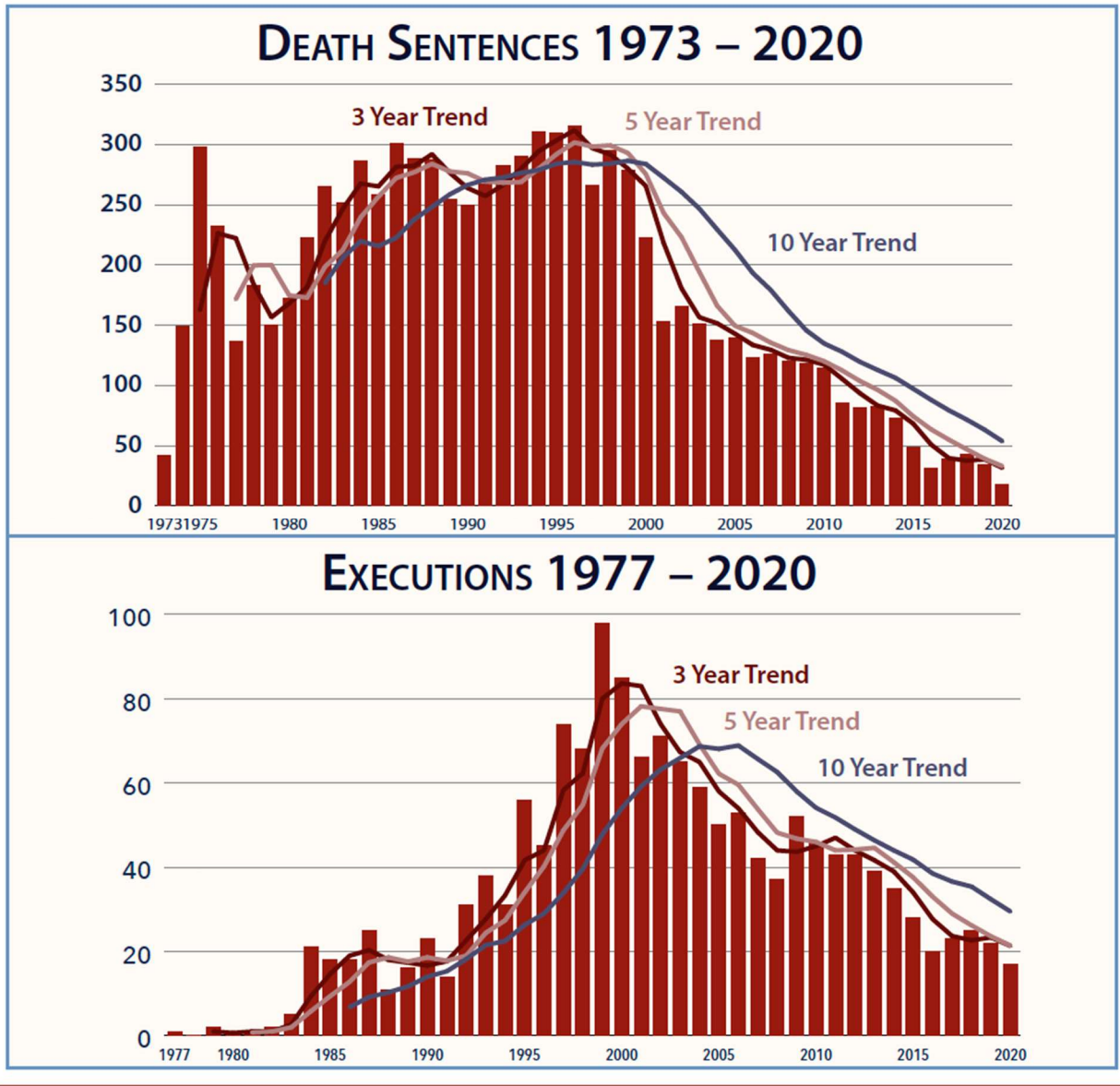


This year, Virginia — which, going back to colonial times, has executed more people than any other jurisdiction that is part of the United States — became the 23rd U.S. state to end the death penalty and the first Southern state to do so. It is the 11th state this century to abolish capital punishment. The governors of Oregon, Pennsylvania, and California have imposed formal moratoria on executions. As a result, a majority of states have either abolished the death penalty or have formally imposed a gubernatorial moratorium on executions.⁴

³ See Death Penalty Information Center (DPIC), *The Death Penalty in 2020: Year End Report* (Dec. 2020), available at <https://reports.deathpenaltyinfo.org/year-end/YearEndReport2020.pdf>.

⁴ See DPIC, *States With and Without the Death Penalty*, <http://www.deathpenaltyinfo.org/states-and-without-death-penalty>.

EXECUTION AND SENTENCING TRENDS



In 1996, there were 315 new death sentences imposed across the United States. In 2020, there were 18, the fewest in any year since the U.S. Supreme Court struck down existing death-penalty statutes in *Furman v. Georgia* in 1972.⁵ There

⁵ It might be tempting to argue that the decline in death sentencing is attributable to the nationwide decline in homicide rates. However, as a 2017 study reported, murders in the 37 states that authorized the death penalty in 1994 declined

were 98 executions in the U.S. in 1999; in 2020, states conducted only seven, the fewest state executions since 1983, before most states had resumed executions.⁶ The numbers were unquestionably affected by the coronavirus pandemic, but even before the pandemic shut down most court systems across the country, the nation was on pace for near-historic lows in death sentences and executions.

The trends at the county level are equally dramatic. In 2013, DPIC's analysis of U.S. death sentences revealed that fewer than 2% of all the counties in the United States accounted for more than 56% of the entire country's death-row population.⁷ Eighty percent of U.S. counties had no one on death row and 85% had not executed anyone in the modern era.⁸ The death sentences imposed in the last several years show that even these counties are imposing the death penalty less frequently. In 2018, for the first time *ever* since the death penalty came back in the United States in 1973, no county anywhere in the U.S. imposed more than two death sentences.⁹ In 2020, only one county had more than a single trial in which a death sentence was imposed.¹⁰

Disturbingly, the decline in the number of death sentences and executions does not appear to have been accompanied by a reduction in its arbitrariness. DPIC's

by 35.4% between then and 2014, while death sentences fell by more than double that rate over the same time frame. See DPIC, *Study Analyzes Causes of "Astonishing Plunge" in Death Sentences in the United States* (Apr. 2, 2018), <https://deathpenaltyinfo.org/node/7059>. Moreover, while the murder rates were down per person, the U.S. population continued to grow in that 20-year period, meaning that death sentences per murder fell even further.

⁶ DPIC 2020 Year End Report; see also DPIC, *Executions by Year*, <http://www.deathpenaltyinfo.org/executions-year>. Executions nationwide were still at a 25-year low in 2020, even considering the 10 executions carried out by the federal government.

⁷ Richard C. Dieter, *The 2% Death Penalty: How a Minority of Counties Produce Most Death Cases at Enormous Costs to All*, Death Penalty Information Center (Oct. 2013), <https://deathpenaltyinfo.org/documents/TwoPercentReport.pdf>.

⁸ *Id.* at 1.

⁹ DPIC, *The Death Penalty in 2018: Year End Report* (Dec. 2018), <https://reports.deathpenaltyinfo.org/year-end/Year-End-Report-r2.f1590086609.pdf>.

¹⁰ DPIC 2020 Year End Report.

review of the executions over the past three years shows that the vast majority of the prisoners put to death had significant mental, emotional, or cognitive impairments, suggesting that the most vulnerable, rather than the most morally culpable, are disproportionately likely to be executed. In 2018, at least 18 of the prisoners executed (72%) had evidence of one or more of the following impairments: significant mental illness; brain injury, developmental brain damage, or an IQ in the intellectually disabled range; or chronic serious childhood trauma, neglect, and/or abuse.¹¹ The same was true of at least 19 of the 22 prisoners executed in 2019 (86%)¹² and 16 of the 17 prisoners put to death in 2020 (94%).¹³

These issues are not limited to death sentences imposed in decades past. More than 20% of the new death sentences imposed in 2020 were the product of proceedings in which defendants were not afforded key procedural protections. Three of the eighteen people sentenced to death in 2020 waived their rights to a jury trial and to have jurors determine their fate, and a fourth represented himself from arrest through trial. In Ohio, four of the 12 death sentences imposed between 2018 and the start of 2021 involved cases in which defendants had neither jury trials nor jury sentencings.¹⁴ From news accounts, at least two of the defendants sentenced to death in 2020 had documented histories of mental illness or chronically traumatic childhoods.¹⁵ This is almost certainly an undercount because failures in representation, investigation, and presentation of mitigating evidence take years after conviction to surface.

¹¹ *DPIC 2018 Year End Report*.

¹² DPIC, *The Death Penalty in 2019: Year End Report* (Dec. 2019), <https://reports.deathpenaltyinfo.org/year-end/YearEndReport2019.pdf>.

¹³ *DPIC 2020 Year End Report*.

¹⁴ See DPIC's 2018, 2019, and 2020 year end reports.

¹⁵ *DPIC 2020 Year End Report*.

State courts and legislatures across the country are moving away from capital punishment, and juries are increasingly reluctant to impose it. Eleven states have legislatively or judicially abolished the death penalty this century,¹⁶ and more have abandoned it in practice.¹⁷ Overall, 36 states have either abolished the death penalty or have not carried out an execution in at least 10 years. The efforts to repeal capital punishment statutes have become increasingly bipartisan, as more and more ideologically conservative legislators have initiated, co-sponsored, and/or voted in favor of bills to replace the death-penalty with life without possibility of parole.¹⁸

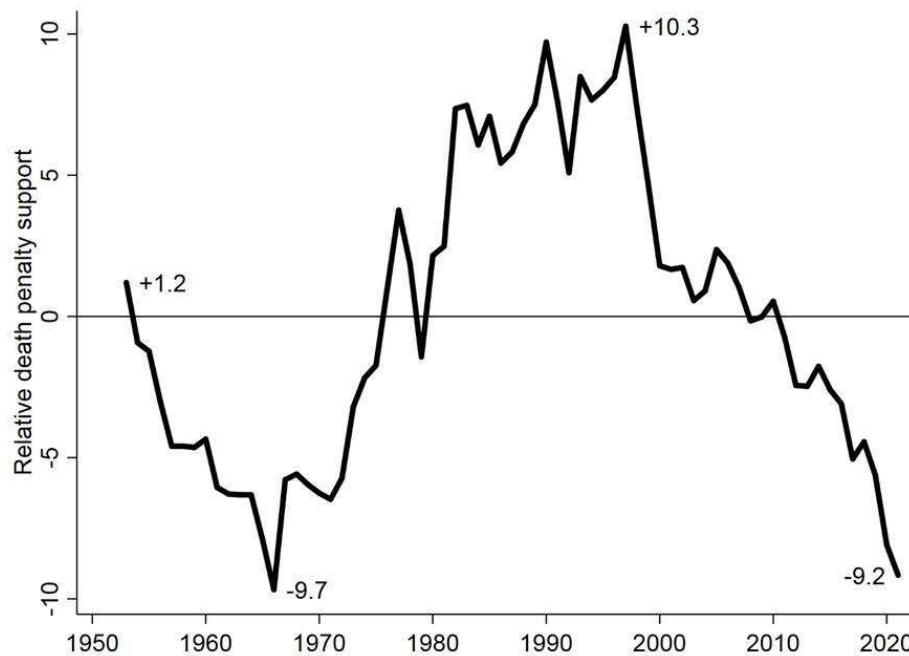
A recent analysis of almost a century of public opinion polls found that American support for the death penalty is at its lowest point since 1966. University of North Carolina political science professor Frank R. Baumgartner reviewed 595 public opinion surveys administered between 1936 and May 2021 that asked respondents across the country about their attitudes towards capital punishment.

¹⁶ See DPIC, *States With and Without the Death Penalty*, <http://www.deathpenaltyinfo.org/states-and-without-death-penalty> (**New York** (declared statute unconstitutional in 2004, then retroactively applied ruling to remaining death-row prisoner in 2007), **New Jersey** (legislatively abolished in 2007), **New Mexico** (legislatively abolished in 2009), **Illinois** (legislatively abolished in 2011), **Maryland** (legislatively abolished in 2013), **Connecticut** (legislatively abolished in 2012, declared unconstitutional by the state Supreme Court in 2015); **Delaware** (statute declared unconstitutional in 2016); **Washington** (statute declared unconstitutional in 2018); **New Hampshire** (legislatively abolished in 2019); **Colorado** (legislatively abolished in 2020); **Virginia** (legislatively abolished in 2021)). **Nebraska** also legislatively repealed the death penalty in 2015 but the repeal was halted by referendum in November 2016. In addition, **Oregon** has amended its death-penalty statute to severely limit the offenses to which it applies and, based on those amendments, the Oregon Supreme Court has declared death sentences imposed under the repealed provisions unconstitutionally disproportionate.

¹⁷ Execution moratoria are in place in California, Oregon, and Pennsylvania, and Washington's moratorium terminated only because the state supreme court declared the death penalty unconstitutional. *Id.*, *States With and Without the Death Penalty*. In addition to the moratorium states, nine other death penalty states, plus the U.S. military, have not carried out any executions in more than a decade. See DPIC, *States with no recent executions*, <https://deathpenaltyinfo.org/executions/executions-overview/states-with-no-recent-executions>.

¹⁸ See Conservatives Concerned About the Death Penalty, *The Right Way: More Republican lawmakers championing death penalty repeal* (Oct. 2017), <http://conservativesconcerned.org/wp-content/uploads/2017/10/The-Right-Way-Online.pdf>; see also Arthur Rizen and Marc Hyden, *A Dying Shame: The state is not God, and the death penalty is not infallible.*, *The American Conservative*, November/December 2018; DPIC, *Legislators Plan New Attempt to Repeal Utah Capital Punishment Law, as Prominent County Attorney Announces He Will No Longer Seek the Death Penalty* (Sep. 8, 2021) <https://deathpenaltyinfo.org/news/legislators-plan-new-attempt-to-repeal-utah-capital-punishment-law-as-prominent-county-attorney-announces-he-will-no-longer-seek-the-death-penalty>; DPIC, *Conservative Voices Continue to Call for End of Death Penalty* (Jan. 8, 2018), <https://deathpenaltyinfo.org/node/6970>.

Though changes in wording could change the exact level of support reported by individual polls, by looking at polls that asked the same question over time, he was able to assess the trends and measure the relative level of support for the death penalty. Baumgartner found that support for capital punishment is the weakest it has been since the 1960s, in the lead-up to the U.S. Supreme Court decision striking down all existing death-penalty statutes in 1972.¹⁹



What the data tell us is that, for all practical purposes, there has been no such thing as a working death penalty in most of the country. Its use has become increasingly geographically isolated as time has gone on, practiced by a few jurisdictions with a history of discriminatory enforcement of the criminal laws, serious systemic problems with the provision of counsel to indigent defendants, and

¹⁹ Frank R. Baumgartner, *If Biden abolishes the federal death penalty, he'll have more support than you think*, The Washington Post, August 3, 2021, <https://www.washingtonpost.com/politics/2021/08/03/if-biden-abolishes-federal-death-penalty-hell-have-more-support-than-you-think/>.

state and federal courts that have aggressively applied procedural barriers to considering the merits of issues that are raised on appeal. The continuing presence of capital punishment in many of these jurisdictions seems rooted more in historical and cultural factors than grounded on any penological or criminal justice need.

RECURRING DEATH PENALTY ISSUES

A number of concerns have been raised about the death penalty throughout the hearings on HB 183. I'd like to address a few of the main issues raised in discussions of death penalty repeal.

Innocence – Everybody's worst fear about capital punishment is that innocent people will be wrongfully convicted and executed. But it is no longer debatable that innocent people can and do get sentenced to death and some have been executed. The data raise serious questions as to whether we can trust our governments to fairly, honestly, and reliably carry out the death penalty.

Since 1973, at least 186 men and women who were wrongly convicted and sentenced to death have been exonerated.²⁰ Some clearly innocent prisoners, like Carlos DeLuna, Rubin Cantu, and Cameron Todd Willingham, have been executed.²¹ Every state believes that its state-court process is exceptional and that it has adopted safeguards that will prevent convicting the innocent. And over and over, people continue to be wrongly convicted and condemned in these jurisdictions.

²⁰ See DPIC, *Innocence and the Death Penalty*, <https://deathpenaltyinfo.org/innocence-and-death-penalty>.

²¹ See DPIC, *Executed But Possibly Innocent*, <https://deathpenaltyinfo.org/executed-possibly-innocent>. We have not been systematically documenting the wrongful executions of likely innocent prisoners, but have found at least twenty instances in which prisoners have been put to death despite serious doubts as to their guilt.

Earlier this year, DPIC issued a *Special Report: The Innocence Epidemic*,²² examining the characteristics and causes of the wrongful capital convictions. Our research corroborates a concern that has been repeatedly raised during hearings on HB 183 — that government is incapable of eliminating the possibility that an innocent person will be sentenced to death and executed. We found exonerations from wrongful capital convictions and death sentences in 118 counties, spanning 29 states.

Nationally, there has been one exoneration for every 8.3 executions — an astonishing failure rate. Ohio’s ratio is even more extreme, with one exoneration for every 5.1 executions. Ohio ties Louisiana in having the fourth highest number of exonerations (11) of all current death penalty states. Cuyahoga County is also an outlier jurisdiction that ties Philadelphia County, Pennsylvania for the highest number of exonerations (6) of all U.S. counties in current death penalty states.²³

There is no reason to think that wrongful convictions are limited to decades-old cases. Exonerations are overwhelmingly the product of police or prosecutorial misconduct or the presentation of false testimony. More likely than not, they involve a combination of the two, and the problem is worse when it comes to defendants of color²⁴ The evidence that forms the basis for these exonerations is rarely uncovered quickly. Five Ohio death-row exonerations took more than 25 years; three took

²² Robert Dunham *et al.*, *DPIC Special Report: The Innocence Epidemic* (Feb. 18, 2021), <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-special-report-the-innocence-epidemic>.

²³ Fifteen exonerations originated in Cook County, Illinois, making it the county with the most exonerations and contributing to Illinois’ rank as the state with the second highest number of exonerations (21). Illinois abolished the death penalty in 2011. See *The Innocence Epidemic*; see also DPIC, *Innocence Database*, Ohio Exonerations, <https://deathpenaltyinfo.org/policy-issues/innocence-database?filters%5Bstate%5D=Ohio>.

²⁴ In *The Innocence Epidemic*, we found that 69% of exoneration cases involve official misconduct by police, prosecutors, or other government officials and that two-thirds involve false accusation or perjury. Misconduct was a factor in more than three-quarters of cases in which Black defendants were exonerated, more than two-thirds of cases involving Latinx defendants, and 58.2 percent of cases with white defendants.

nearly 40.²⁵ All involved official misconduct. In all eight cases nationwide in which exoneration from a wrongful capital conviction occurred 31 or more years after conviction, official misconduct was one of the reasons for the wrongful conviction.

Causes of Wrongful Capital Convictions	Number of Cases (n=186)	% of Cases
Official Misconduct	128	68.8%
False Confession	30	16.1%
False or Misleading Forensic Evidence	60	32.2%
Inadequate Legal Defense	47	25.2%
Insufficient Evidence	17	9.1%
Mistaken Witness Identification	37	19.9%
Perjury or False Accusation	126	67.7%
Exonerations Involving DNA	28	15.1%

We know that prosecutorial misconduct is a persistent problem in the administration of the death penalty, particularly in jurisdictions with high rates of death sentencing and executions.²⁶ A review of DPIC data shows in at least 16 Ohio death penalty cases courts have reversed convictions or sentences for prosecutorial misconduct or prosecutorial misconduct contributed to the wrongful conviction that eventually led to an exoneration. Of these cases, 8 originated in Cuyahoga County and 4 originated in Hamilton County, the two biggest contributors to Ohio’s death row.

Reliability – According to the U.S. Bureau of Justice Statistics, the single most likely outcome of a capital case once a defendant is sentenced to death is that

²⁵ DPIC Innocence Database, Ohio Exonerees.

²⁶ See The Fair Punishment Project, *Too Broken to Fix: Part I*, August 23, 2016, https://files.deathpenaltyinfo.org/documents/FairPunishmentProject-TooBroken_2016-08.pdf.

the conviction or death sentence will be overturned.²⁷ The same is true in Ohio. DPIC is completing a census of all the death sentences imposed in the United States since capital punishment resumed in the 1970s. We recently reviewed our data from Ohio, where we have identified 440 prisoners sentenced to death since 1975. Nearly half (48.9%) of the prisoners sentenced to death have been removed from death row and resentenced to life or less or exonerated. Courts have overturned the convictions or death sentences in 194 of those cases (44.1%) as a result of prejudicial constitutional or state law violations. Governors have commuted an additional 21 death sentences (4.8%). 31.8% of prisoners sentenced to death in Ohio since the 1970s are still on death row.²⁸

The data from Ohio reflects a death-penalty system even more error prone than the national average. A 2015 study of death sentences imposed nationwide from 1973 to 2013 found that 16% of people sentenced to death had been executed, 38% had their sentence or conviction overturned, and 35% remained on death row. The rest had died on death row of suicide or natural causes, had their sentence commuted, or were removed from death row for other reasons.²⁹

Costs – Studies consistently show that the death penalty costs more than even the harshest alternative punishments such as life without the possibility of parole or a long prison term.³⁰ These costs accrue at various points in a death penalty case, **pre-trial**—with the extensive investigation needed and additional attorney resources

²⁷ Frank R. Baumgartner and Anna W. Dietrich, *Monkey Cage: Most death penalty sentences are overturned. Here's why that matters.*, The Washington Post, March 17, 2015, <https://www.washingtonpost.com/news/monkey-cage/wp/2015/03/17/most-death-penalty-sentences-are-overturned-heres-why-that-matters/>.

²⁸ DPIC, *Report: 83% of Death Sentences Have Not Resulted in Executions Under Ohio's 'Lethargic' Death Penalty* (April 9, 2021), <https://deathpenaltyinfo.org/news/report-83-of-death-sentences-have-not-resulted-in-executions-under-ohios-lethargic-death-penalty>.

²⁹ *Monkey Cage: Most death penalty sentences are overturned.*

³⁰ See DPIC, *Costs of the Death Penalty*, <https://deathpenaltyinfo.org/costs-death-penalty#financialfacts>.

required for capital cases; **at trial and sentencing**—where attorneys and the courts should take a searching look at both the evidence of guilt or innocence and at the defendant’s background; **on appeal and post-conviction review**—where the system is tasked with ensuring that the particular constitutional requirements of the imposition of the death penalty were met; **as an execution approaches**—where a clemency investigation and hearing are conducted and where courts must monitor the state’s compliance with the Eighth Amendment’s protections against the execution of the mentally incompetent and against a torturous death. As discussed above, even with this multi-stage process, wrongful convictions and death sentences still occur, and prisoners still wait decades for relief to be granted.

Even though many capital indictments do not result in death sentences, significant costs are incurred in early stages of the case. A 2017 Oklahoma study found that charging cases capitally imposed significant additional costs even when no death sentence was imposed. Capital prosecutions, it found, cost the counties more than 1½ times the amount of incarceration costs than did non-capital trials because capital defendants spent an average of 324 more days in jail prior to and during death penalty trials. Prosecutors spent triple in pre-trial and trial costs on death penalty proceedings, while defense teams spent nearly 10 times more.³¹ An audit of Maricopa County, Arizona capital prosecutions found that capital murder cases cost eight to 40 times more than first-degree murder cases in which the death penalty is not sought. Capital cases ending in a plea to a lesser offense or sentence cost about \$213,000, more than the cost of a non-capital case taken to trial.³²

³¹ P. Collins, M. Hickman, and R. Boruchowitz, *An Analysis of the Economic Costs of Capital Punishment in Oklahoma* (April 2017), <https://deathpenaltyinfo.org/files/pdf/Report-of-the-OK-Death-Penalty-Review-April-2017-a1b.pdf>.

³² DPIC, *Maricopa County, Arizona DA Seeks Death Penalty So Often, The County Has Run Out of Capital Defense Lawyers* (March 29, 2017), <https://deathpenaltyinfo.org/news/maricopa-county-arizona-da-seeks-death-penalty-so-often-the-county-has-run-out-of-capital-defense-lawyers>.

The price tag of the death penalty continues to mount when you factor in the cost of keeping death-row prisoners in separate single-cell housing. Other prisoners, even those who have been convicted of aggravated murder, are housed based on determinations of security risk and assessments of their conduct while incarcerated. Most of the Ohio prisoners whose death sentences were reduced to life without parole are housed in medium or lower security facilities.³³ Even if all prisoners who would otherwise get the death penalty were housed in maximum or supermax security, the costs would still be lower because of the eventual elimination of the need for a separate death row with dedicated space, guards, and security protocols.

Other hidden costs are not accounted for in comparisons of the death penalty to other punishments. For example, states and local jurisdictions face civil liability for wrongful prosecutions.³⁴ Last year, the city of Cleveland agreed to pay \$18 million to settle a civil rights lawsuit by three former death-row prisoners who, because of police misconduct, spent more than a combined 80 years imprisoned for a murder they did not commit.³⁵ Recent executions in other jurisdictions have cost taxpayers millions.³⁶

³³ Ohio Department of Rehabilitation and Correction, Offender Search, <https://appgateway.drc.ohio.gov/OffenderSearch>.

³⁴ DPIC, *Hidden Costs: Liability Judgments for Wrongful Capital Prosecutions Cost Taxpayers in Death-Penalty States Hundreds of Millions of Dollars* (July 15, 2021), <https://deathpenaltyinfo.org/news/hidden-costs-liability-judgments-for-wrongful-capital-prosecutions-cost-taxpayers-in-death-penalty-states-hundreds-of-millions-of-dollars>.

³⁵ DPIC, *Ohio Death Row Exonerees Reach \$18 Million Settlement with City of Cleveland* (May 12, 2020), <https://deathpenaltyinfo.org/news/ohio-death-row-exonerees-reach-18-million-settlement-with-city-of-cleveland>.

³⁶ DPIC, *Records Disclose Taxpayers Picked Up a Nearly Million Dollar Price Tag for Each Federal Execution* (July 15, 2021), <https://deathpenaltyinfo.org/news/records-disclose-taxpayers-picked-up-a-nearly-million-dollar-price-tag-for-each-federal-execution>; DPIC, *Arizona DoC Paid \$1.5 Million for Execution Drugs While Facing a Budget Crisis* (April 15, 2021), <https://deathpenaltyinfo.org/news/arizona-doc-paid-1-5-million-for-execution-drugs-while-facing-a-budget-shortfall>.

Discrimination – Studies of jurisdictions across the country have found that the race of a murder victim is an important factor in whether defendants are capitally charged, sentenced to death, and eventually executed. Many studies have also shown that African-American defendants with white victims are the most likely to be sentenced to death.³⁷

Ohio studies are no exception. A 2005 study by the Associated Press found geographic and racial disparities in the administration of Ohio’s death penalty. The study reviewed 1,936 indictments reported to the Ohio Supreme Court between October 1981 and December 2002 by counties with capital cases. The study concluded that defendants facing the death penalty on charges of killing a white person were twice as likely to be sentenced to death than defendants charged with killing a Black person.³⁸

A 2020 study of Hamilton County’s administration of the death penalty came to the same conclusion. The study reviewed the 599 aggravated murder cases brought in Hamilton County between January 1992 and August 2017 and found that, in cases with at least one white victim, the odds that a defendant would be capitally charged were 4.54 times greater than in a similarly situated case with no white victims. It further found that a Black defendant who was charged with the aggravated murder of at least one white victim “faced odds of receiving a death sentence that were 3.79 times those of all other similarly situated defendants.” When the researchers examined the subset of those cases in which prosecutors sought the death

³⁷ See Ngozi Ndulue, *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty* (Sept. 2020), <https://documents.deathpenaltyinfo.org/pdf/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf>.

³⁸ DPIC, *AP Study* (May 11, 2005), <https://deathpenaltyinfo.org/news/ohio-ap-study>.

penalty, they found that “a black defendant with at least one white victim faced odds of receiving a death sentence that were 5.33 higher than all other cases.”³⁹

Our September 2020 report, *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty*,⁴⁰ examined the impact of race over the course of the 400-year history of capital punishment in the U.S. from the colonial period to the present. We found that race has an impact on death penalty cases at every stage of the legal process, from policing through execution, resentencing, or exoneration. Prosecutors are more likely to seek death in cases involving white victims; once a case has been designated as capital, defendants of color are disproportionately likely to be sentenced to death. In the U.S. South, the death penalty has been a descendent of slavery, lynching, and Jim Crow segregation, often overtly reinforcing the same racial hierarchies.

Public Safety – Legislatures contemplating abolition are often concerned about what will happen if they vote to replace the death penalty with life without parole or some other lengthy prison term. That question is closely related to the questions of whether the death penalty deters murders and contributes to public safety and whether having a death penalty makes police officers and other law enforcement personnel safer.

There is no evidence that the death penalty is a deterrent, much less that it deters more effectively than a long prison term or a sentence of life without parole.⁴¹

³⁹ Catherine M. Grosso, Barbara O’Brien, and Julie C. Roberts, *Local History, Practice, and Statistics: A Study on the Influence of Race on the Administration of Capital Punishment in Hamilton County, Ohio (Jan. 1992-Aug. 2017)*, <http://hrlr.law.columbia.edu/hrlr/local-history-practice-and-statistics-a-study-on-the-influence-of-race-on-the-administration-of-capital-punishment-in-hamilton-county-ohio-january-1992-august-2017/>.

⁴⁰ Ngozi Ndulue, *Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty* (Sept. 2020), <https://documents.deathpenaltyinfo.org/pdf/Enduring-Injustice-Race-and-the-Death-Penalty-2020.pdf>.

⁴¹ See DPIC, *Facts about Deterrence and the Death Penalty*, <https://deathpenaltyinfo.org/facts-about-deterrence-and-death-penalty>.

Studies show that “[t]he certainty of apprehension, and not the severity of the ensuing legal consequence, is the more effective deterrent” and that “the deterrent return to increasing an already long sentence appears to be small, possibly zero.”⁴²

DPIC analyzed three decades of FBI murder data to analyze the relationship between the death penalty and public safety and to determine what happens when states abolish the death penalty.⁴³ We broke the states down into three categories:

1. Death Penalty States: states that have had the death penalty essentially from the beginning of the modern era of the death penalty in the 1970s through now;
2. Non-Death Penalty States: states that abolished the death penalty at some point in the 20th century and never had it at any point during our study period; and
3. Transitional States: states that, at some point in this century have abolished the death penalty; for that, essentially, we're looking at 2007 and forward.⁴⁴

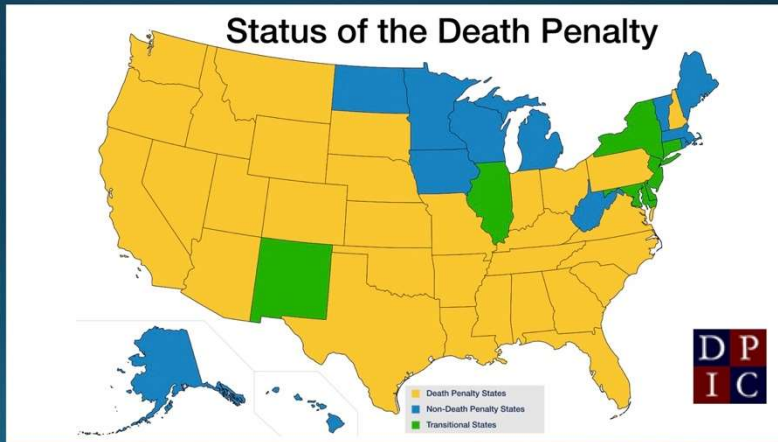
⁴² See DPIC, *Report: Deterrence is Based on Certainty of Apprehension, Not Severity of Punishment*, <https://deathpenaltyinfo.org/node/6950>; Daniel S. Nagin, *Deterrence*, in *Reforming Criminal Justice: Bridging the Gap Between Scholarship and Reform*, vol. 4, *Punishment, Incarceration, and Release*, Academy for Justice, Arizona State University (E. Luna, ed. 2017).

⁴³ For our initial study, our source of information on the number of murders nationwide and in each state was the FBI Uniform Crime Reports, Annual Murder Data from 1987 to 2015. Our source of information on the numbers of murders of law enforcement nationwide and in each state was the FBI Uniform Crime Reports, Law Enforcement Officers Killed & Assaulted, Officers Feloniously Killed Annual Data (LEOKA reports), 1987 through 2015. Our source of information on population nationwide and in each state was the FBI Uniform Crime Reports, Annual State Population Data from 1987 through 2015. We have continued to review the FBI data since 2015, and our analysis and conclusions remain the same.

⁴⁴ For an explanation of our methodology and how we did our calculations, see DPIC, *Supporting Data for 2017 DPIC Study of Murder Rates and Killings of Police: How DPIC conducted the analysis*, <https://deathpenaltyinfo.org/Data-from-DPIC-Study-of-Murder-Rates-and-Killings-of-Police>.

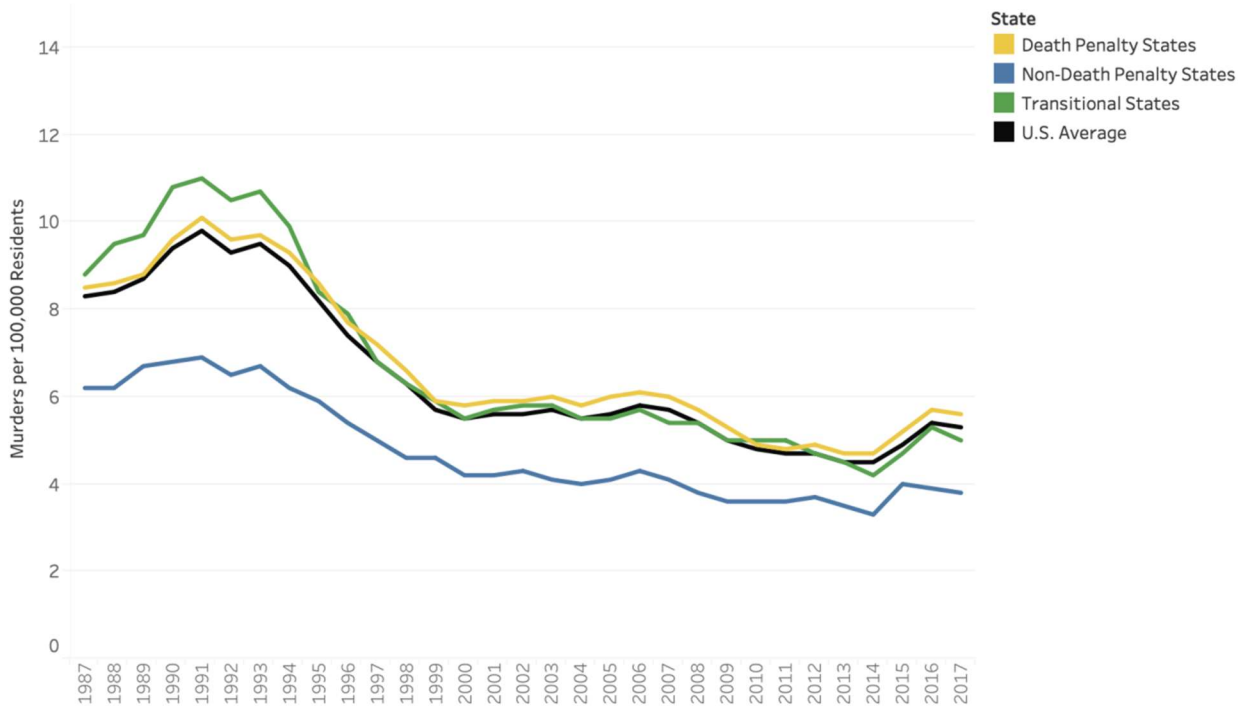
The short answer to these questions is “No.”

- Did murder rates rise? **No.**
- Did the rate of murders of law enforcement go up? **No.**
- Did killings of police increase as a %age of all murders? **No.**



If the death penalty deterred murder generally, then—all other things being equal—murder rates should be lower in states with the death penalty than in states that did not authorize capital punishment. The graphic below, updated to include FBI data through 2017, shows the trends in the overall murder rates. The first thing to notice is that the murder rate in the death-penalty states is consistently and markedly higher than in states that don't have the death penalty. The second thing you see is that the murder trends are pretty much the same, irrespective of what group of states you are in. That suggests that the death penalty doesn't make a difference in murder rates. It isn't the deterrent it was advertised to be.

Murder Rate 1987–2017



An interesting point to notice here is that the transitional states as a whole—the states that eventually abolished the death penalty—had higher collective murder rates earlier on in the study period, on the left-hand side of the graph. What you would have expected to see, if the death penalty were a deterrent, is that the murder rates in those states would disproportionately rise over time following abolition, so the green graph line designating the transitional states should spike in comparison to the other lines near the right-hand side of the graph. That did not happen. Instead, the patterns for all four comparison groups are virtually identical from the year 2000 on.

The states that never had the death penalty during the 31 years covered by the study were among the states with the lowest murder rates. All but one of the non-death-penalty states had a murder rate below the national average. By contrast, virtually every state with a murder rate above the national average had been a death-penalty state for most or all of the study period. Death-penalty states had 13 of the

17 highest murder rates and 21 of the highest 27. By contrast, non-death-penalty states had 7 of the 11 lowest murder rates. There was no discernible pattern among the transitional states.

In addition, only one of the 22 states with the lowest murder rates had averaged more than one execution per decade over the past half century, and that state – Utah – had carried out seven executions. **So, the states with the lowest murder rates were, uniformly, states that had abolished the death penalty or that almost never carried it out.**

Comparing the murder rates for each of the categories of states, the aggregate numbers quantify what the graphic of murder rates over time suggests: that murder rates in individual states tend to be higher if the state has the death penalty; and, collectively, murder rates are higher in states that have the death penalty than in states that do not. That is not a result you would expect if the death penalty were a deterrent.

Murder Rates (1987-2015)					
Category of State	Murder Rate/100,000 Population	Murder Rate in Comparison to:			
		United States	Death Penalty States	Non-Death Penalty States	Transitional States
United States	6.424	X	1.03 times lower	1.34 times higher	1.05 times lower
Death Penalty States	6.646	1.03 times higher	X	1.39 times higher	1.02 times lower
Non-Death Penalty States	4.788	1.34 times lower	1.39 times lower	X	1.41 times lower
Transitional States	6.767	1.05 times higher	1.02 times higher	1.41 times higher	X

The death-penalty states had a higher-than-average murder rate – indeed, that was the case for every one of the years we reviewed. Overall, murders were committed in death-penalty states at a rate 1.39 times higher than murders in non-death penalty states.

Looking at the numbers, one would be tempted to suggest that the death penalty caused the higher murder rates. But that argument is just as ridiculous as suggesting that the death penalty deters. Instead, what I think the numbers are telling us is that the death penalty has no effect on murder rates; the relationship is the other way around. Generally speaking, the states that have the most murders and the highest murder rates are the ones that tend to have the death penalty. And the states that most long ago abolished the death penalty tend to be states that have had the fewest number of murders and the lowest murder rates.

But what about the transitional states? The data showed that the overall murder rate in the transitional states was substantially higher than all other categories of states from 1987 through 1995, dropped below the murder rates in the retentionist states in 1995, and has remained below the murder rates in those states in all but two years since. The murder rate in the transitional states has remained very close to, and even slightly below, the national rate for the last two decades.

We next looked at officer-victim rates to test the hypothesis that the death penalty makes police safer. We found that it does not.

Fortunately, killings of police in the line of duty are very rare and represent a tiny fraction of all murders. But because of this, the year-by-year numbers are volatile, especially at the state level. But viewed over the longer term, historical patterns emerge for each of the categories of states we examined and, generally-speaking, the trends are similar. As with murders in general, the rates at which police officers are killed are *higher* in most years in states that have the death penalty than in states that don't. And, over the course of time, the officer-victim murder rates are

lowest in most years in states that once had the death penalty but later-on abolished it.

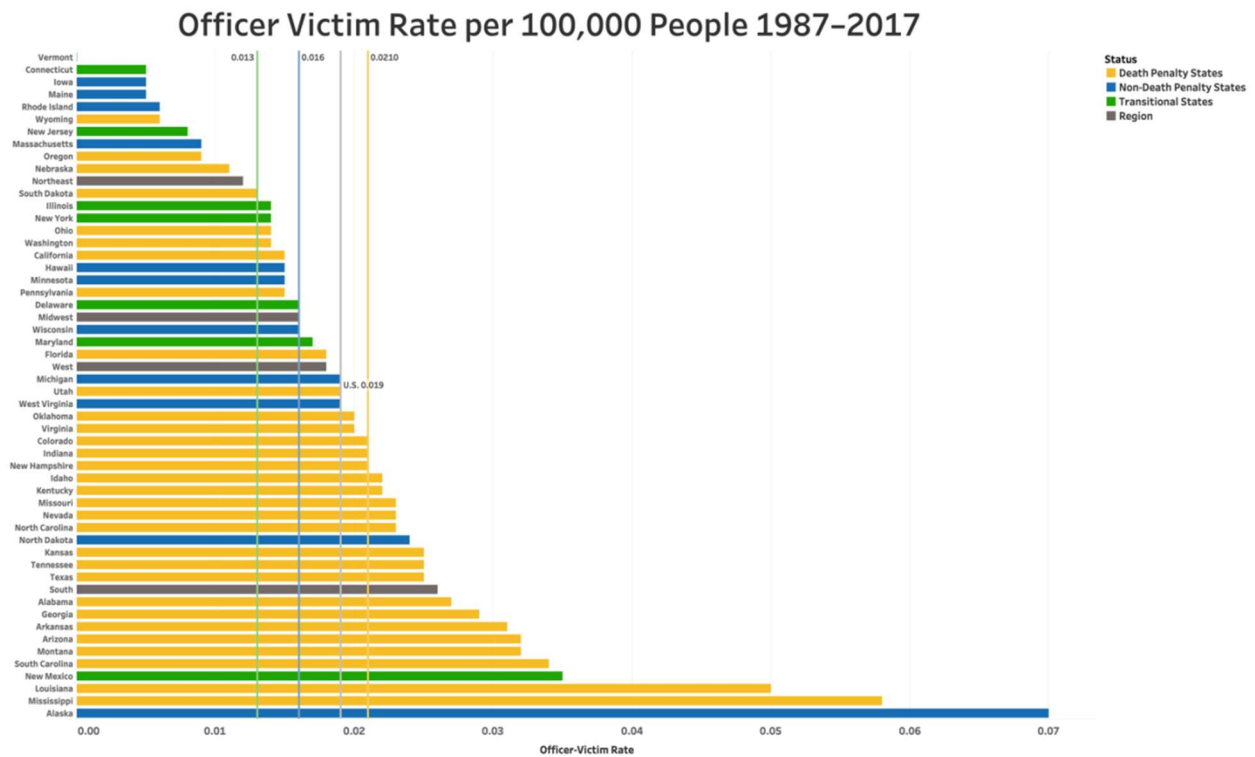
When we aggregate the numbers, this is what we see:⁴⁵

Officer Murder Rates (1987-2015)					
Category of State	Murder Rate/1,000,000 Population	Murder Rate in Comparison to:			
		United States	Death Penalty States	Non-Death Penalty States	Transitional States
United States	0.195	X	1.11 times lower	1.23 times higher	1.43 times higher
Death Penalty States	0.218	1.11 times higher	X	1.37 times higher	1.59 times higher
Non-Death Penalty States	0.159	1.23 times lower	1.37 times lower	X	1.16 times higher
Transitional States	0.136	1.43 times lower	1.59 times lower	1.16 times lower	X

Ohio, fortunately, is among the safer states in which to be a police officer, with the 15th lowest rate of officers killed in the line of duty. But the data strongly suggest that the death penalty has nothing to do with that. As with murders generally, officers are disproportionately murdered in states that have capital punishment, as compared to states that don't. According to the FBI homicide data, law enforcement officers are murdered at a rate 1.37 times higher in death-penalty states than in non-death-penalty states.

⁴⁵ Murders in which police officers are victims are so rare and the officer-victimization murder rates are so small that we report them in the table as the murder rate per 1 million population. Even then, the numbers are a fraction of one in a million. But looking at the numbers at this decimal level avoids injecting mathematical errors from rounding and makes the numbers easier to grasp visually.

Further, four of the five safest states for police officers were non-death-penalty states. Seven of the eight safest states for police officers were states that either did not have the death penalty at any time in the study period or transitional states that had recently abolished capital punishment. The lone death-penalty state in the group was Wyoming, which has no one on death row, has carried out one execution in the past 50 years, and hasn't executed anyone since 1992. By contrast, death-penalty states comprised 21 of the 24 states with the highest rates of officers murdered in the line of duty.



The data from the transitional states also undermine any thought that the death penalty affects the rate at which officers are killed in the line of duty. With one exception, the officer-victim rates in the transitional states all were below the national average and substantially below the average for police-murder victimization in the long-term death-penalty states. But there is no reason why – if the death

penalty made officers safer – they should be 1.59 times safer in a class of death-penalty states that later abolished capital punishment.

Further, if the death penalty were necessary to protect law enforcement, there should be a noticeable and consistent change in the rates at which police were killed following abolition. That didn't happen. Instead, as with murders as a whole, at the time of our analysis, the seven states that had abolished the death penalty this century showed no post-abolition pattern of increased officer-victimization, nor any consistent deviation from national trends.⁴⁶

If there is no discernible relationship between having or not having the death penalty and trends related to murders generally, or murders of police officers in particular, what do the data mean? The most likely answer is that while the death penalty makes no measurable contribution to police safety, the frequency with which police officers are killed affects the climate in which decisions to retain or repeal the death penalty are made.

For those concerned with public safety, the key takeaways are that the death penalty does not affect murder rates and has no discernable impact on the killing of law enforcement officers. The data also suggest there is no correlation between death-penalty repeal and changes in murder rates: when abolition occurs, murders don't rise, nor do the rates or percentages at which police officers are killed.

CONCLUSION

The legislature has the solemn responsibility of setting the criminal penalties under Ohio law. Like a growing number of legislators across the country, three of

⁴⁶ *Life After the Death Penalty: Implications for Retentionist States*, ABA Section of Civil Rights and Social Justice, August 14, 2017, https://deathpenaltyinfo.org/files/pdf/Life-After-Death-Penalty_Transcript.pdf.

the architects of Ohio's death penalty have looked at the system and decided it is too broken to fix. Former Governor Robert Taft and former state attorneys general Jim Petro and Lee Fisher served in the legislature when the death penalty was enacted in 1981 and played key roles in carrying it out. They concluded:

We had the best of intentions, but in this case, we built it, and the expected benefits did not come. Instead, we have a broken and incredibly costly system that fails to protect or aid us in any way. It is time to retire Ohio's death penalty.⁴⁷

Now it is this legislature's responsibility to examine all the facts and determine whether Ohio's death penalty experiment should continue.

The evidence shows that the death penalty is costly, unevenly applied, and unreliable. The death penalty does not make communities safer, with death penalty states having higher murder rates than non-death penalty states. With 11 exonerees, Ohioans have become increasingly aware of the human cost of wrongful convictions. Nearly half of the people sentenced to death by Ohio courts since 1974 have been removed from death row and resentenced to life or less or exonerated. At a time when capital punishment is declining nationwide, you will have to chart a path forward for Ohio.

This body must grapple with important considerations in deciding how to proceed regarding House Bill 183 and the state's death penalty. The Death Penalty Information Center would be happy to provide the Committee with more extensive information on the points I have discussed during this testimony, and on any other questions it may have about capital punishment.

⁴⁷Taft, Fisher, Petro: *Ohio's death penalty must be repealed*, March 9, 2021, Dispatch.com, <https://www.dispatch.com/story/opinion/2021/03/09/repeal-ohio-death-penalty-bob-taft-lee-fisher-jim-petro/4628742001/>.