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TO: House Criminal Justice Committee

FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio

DATE: November 18, 2021

RE: House Bill 183 – Proponent testimony

To Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland, and members of the House Criminal Justice Committee, thank you for this opportunity to provide the following proponent testimony for House Bill 183.

I have included with my testimony three other documents with further information regarding Ohio's death penalty I hope you find useful. These documents provide more detail than I will speak about today regarding county-specific information, botched executions, and exonerees.

You have heard from others before me and will hear more after me. The common thread of what proponents are voicing is there is something for everyone to hate about the death penalty. The only question now is whether one of, some of, or all these numerous reasons is enough for Ohio to finally end laws and practices that manage to represent everything flawed with our criminal legal system.

While HB 183 opponents argue the death penalty is necessary because it provides "justice" all available information and data demonstrates the death penalty has everything to do with geography, race, and income, not justice.

GEOGRAPHY

Ohio's Death Row currently includes 132 people. Cuyahoga County has the most people (24) awaiting execution. That county makes up 10.5% of Ohio's population but a little over 18% of Death Row. Hamilton, with 7% of Ohio's population, is next. It represents 13.6% of Death Row, almost double its percentage of Ohio's population. Lucas County is fourth with 3.6% of Ohio's population but 6.8% of Death Row. At fifth, Trumbull County is the most lopsided of the top five counties. It contains 1.7% of Ohio's population but a whopping 6% of Death Row.

16 Ohio counties have one person on Death Row. 53 have none. Ohio's death penalty is about geography.

RACE

We also know if you are black you are far more likely to be convicted of a capital crime and killed by the state than if you are white. This is true in Ohio and across the country. It is also true one is far more likely to be put to death if the victim was white. These are not recent anomalies or statistical aberrations. This has been true as far back as anyone can recall. Ohio's death penalty is about geography and race.

INCOME

It is not news to this committee, which considers so many mass incarceration issues and bills, and with so many who are attorneys, that how much money one has makes a giant difference with regard to success in court and quality of legal representation. Too often, overworked county public defender offices with limited capacity are tasked with representing someone against a prosecutor's office with more resources and more to spend. Across the system, this frequently resembles David vs. Goliath far more than what fundamental fairness requires, especially when a life is literally on the line. Ohio's death penalty is about geography, race, and income.

BOTCHED EXECUTIONS

Over an 11-12 year period from 2006-2017, Ohio experienced *five* horribly botched executions, all of which drew statewide, national, and international attention. Our state is simply horrible at carrying out the death process itself. This has repeatedly resulted in unnecessary and cruel pain, suffering, and torture of those Ohio has a constitutional obligation to treat humanely if it is going to legally kill them. Given Ohio's repeated failures in this regard, it is natural and necessary to ask and be concerned with how many more times this will happen.

EXONERATIONS

So far, Ohio has had a shocking eleven exonerations from Death Row. Of course, these are people once thought to have committed a heinous crime Ohio was prepared to kill. Perhaps a single exoneration represents one serious mistake but the system does not need an overhaul. A second exoneration should elicit significantly more concern as it may indicate a pattern of systemic problems.

But eleven exonerations is a blaring alarm things are fundamentally wrong and are apparently beyond fixing so long as the death penalty is an option.

Many of the same people who believe government screws up everything it touches or gets involved in are many times the same people convinced the government gets the death penalty 100% correct, all the time, despite all evidence to the contrary. Amid broad claims of government inefficiency, incompetence, overreach, and dishonesty they give the death penalty a free pass.

DETERRENCE

It is also evident the death penalty provides no deterrence with regard to others' terrible crimes. Michigan lawmakers abolished the death penalty in 1847, 19 years after they executed an innocent person. In 1962, by a 108-3 vote, a state constitutional convention cemented that ban in their constitution. 22 additional states have abandoned the death penalty, with 7 of those bans enacted in just the past 10 years (Virginia, 2021; Colorado, 2020; New Hampshire, 2019; Washington, 2018; Delaware, 2016; Maryland, 2013; Connecticut, 2012).

Most countries across the globe have reached the same point. 107 countries have abolished capital punishment while another 27 countries functionally have, with no executions in the last decade and a pattern of laws and practices indicating none are on the horizon. 54 countries continue with the death penalty, among them Saudi Arabia, China, Afghanistan under Taliban rule, and North Korea. However, even among those 54 countries are indications capital punishment is further waning.

And, again, 53 of 88 Ohio counties currently have no one on Death Row. So, to believe the death penalty provides a deterrence is to argue the counties, states, and countries that execute their people are somehow safer than those that do not. But the data does not indicate that whatsoever.

At HB 183's most recent hearing you even heard Ohio prosecutors repeatedly say the same thing about the death penalty providing no deterrent value.

Geography, race, income, botched executions, exonerations, national and global trends, and no deterrence. There remain no reasons left to support the shrinking practice of capital punishment. The ACLU of Ohio hopes you agree and will support the bipartisan, crucially important House Bill 183.

Addendum #1 – HB 183 House Criminal Justice Committee Testimony – 11/18/21
From Gary Daniels, ACLU of Ohio – gdaniels@acluohio.org

DEATH ROW & COUNTIES AS PERCENTAGE OF OHIO POPULATION

- Death Row data current as of October 2021
- 132 people currently on Ohio's Death Row
- County population data from 2019
- "Total #" = Number of people on Death Row from that county

RANK	SENTENCING COUNTY	TOTAL #	% OH POP	% DEATH ROW
01	CUYAHOGA	24	10.52%	18.18%
02	HAMILTON	18	6.9%	13.64%
03	FRANKLIN	10	11.26%	7.58%
04	LUCAS	09	3.66%	6.82%
05	TRUMBULL	08	1.69%	6.06%
06	SUMMIT	07	4.62%	5.30%
07	BUTLER	06	3.27%	4.55%
08	MONTGOMERY	05	4.54%	3.79%
08	STARK	05	3.17%	3.79%
10	CLARK	04	1.15%	3.03%

2 = Counties with three people currently on Death Row

7 = Counties with two people currently on Death Row

16 = Counties with one person currently on Death Row

53 = Counties with no one currently on Death Row

Also:

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://files.deathpenaltyinfo.org/legacy/documents/TwoPercentReport.pdf>

Addendum #2 – HB 183 House Criminal Justice Committee Testimony – 11/18/21
From Gary Daniels, ACLU of Ohio – gdaniels@acluohio.org

Information from:

The National Registry of Exonerations

<https://www.law.umich.edu/special/exoneration/Pages/about.aspx>

Death Penalty Info Center

<https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/ohio>

Ohioans to Stop Executions

<https://otse.org/issues/innocence-wrongful-convictions/>

OHIO EXONEREES (in alphabetical order)

Gary Beeman

Convicted in 1976. Exonerated in 1979. An appeals court reversed his conviction based on the conduct of the trial court judge regarding a witness for the prosecution. He was acquitted by a jury after a retrial and after five people formerly in jail testified someone else admitted the murder.

Ronnie Bridgeman (Kwame Ajamu)

Convicted in 1975. Exonerated in 2014. Released after a witness recanted testimony he gave when he was 12-years-old claiming he saw the murder.

Wiley Bridgeman

Convicted in 1975. Exonerated in 2014. Released after a witness recanted testimony he gave when he was 12-years-old claiming he saw the murder.

Joe D'Ambrosio

Convicted in 1989. Exonerated in 2012. Conviction was overturned in federal court after it was revealed prosecutors withheld key evidence in both the original case and a retrial. After prosecutorial misconduct was revealed, the court barred reprosecution of D'Ambrosio and the Supreme Court of the United States denied an appeal.

Timothy Howard

Convicted in 1977. Exonerated in 2003. Released from prison in 2003 after conflicting witness statements and fingerprint evidence was uncovered in the killing of a bank guard. Franklin County dropped all charges.

Ricky Jackson

Convicted in 1975. Exonerated in 2014. Released after a witness recanted testimony he gave when he was 12-years-old claiming he saw the murder.

Gary Lamar James

Convicted in 1977. Exonerated in 2003. Released from prison in 2003 after conflicting witness statements and fingerprint evidence was uncovered in the killing of a bank guard. Franklin County dropped all charges.

Derrick Jamison

Convicted in 1985. Exonerated in 2005. A federal court ordered a new trial after it was revealed prosecutors withheld evidence and problems with witness identification. The prosecutor chose not to retry the case.

Dale Johnston

Convicted in 1984. Exonerated in 1990. A witness hypnotized to "enhance her memory" said she saw Johnston roughing up the victim and a court said the prosecutor withheld exculpatory evidence. A court deemed the hypnotized witness unreliable and another suspect ultimately confessed and was convicted.

Michael Keenan

Convicted in 1989. Exonerated in 2012. Prosecutors withheld evidence leading to his conviction and death sentence being overturned. As prosecutors attempted to retry him a third time, he accepted a plea deal.

Thomas Pearson

Convicted in 1976. Exonerated in 1980. His conviction was vacated on appeal because of insufficient evidence, which also made him ineligible for retrial.

Addendum #3 – HB 183 House Criminal Justice Committee Testimony – 11/18/21
From Gary Daniels, ACLU of Ohio – gdaniels@acluohio.org

BOTCHED EXECUTIONS IN OHIO (2006-2017)

Joseph Clark

In 2006, it took almost 2½ hours for the execution team to find a suitable vein to inject Clark. Witnesses reported moaning, crying, and guttural noises from Clark during the process.

Christopher Newton

In 2007, it took almost 2 hours to kill Newton because of problems finding a suitable vein in his 265 pound body. He was stabbed with needles at least 10 times during the process.

Romell Broom

In 2009, Ohio attempted for two hours to execute Broom but the execution team failed to find a suitable vein for injection. He later challenged, but was unsuccessful arguing in court, Ohio getting a second chance to kill him. He died in 2020 of suspected COVID-19 while still in prison.

Dennis McGuire

In 2014, McGuire writhed in pain, gasped for air, and made sounds indicating suffocation as it took 25 minutes to kill him utilizing a combination of new drugs for execution.

Alva Campbell, Jr.

In 2017, Ohio attempted to execute the already severely-ill Campbell for almost two hours but could not find a suitable vein. At one point, Campbell cried out in pain as the team stuck him with a needle. This led to Gov. Kasich postponing his execution. Campbell died in prison in 2018.