



Office of the Ohio Public Defender

Timothy Young, State Public Defender

SBA Article in Support of SB103 Death Penalty Abolition Sponsor Senators Antonio and Huffman

Chairman Manning, Vice Chair McColley, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to testify in support of Senate Bill 103. I am State Public Defender Tim Young. On behalf of the Office of Ohio Public Defender (OPD), I speak in support of Senate Bill 103 and all efforts to abolish the death penalty in Ohio. The time has come to extinguish this inhumane practice.

The death penalty is the most inefficient government program in existence. If any other law was this expensive, this flawed, and this ineffective at delivering results, there is no doubt the General Assembly would rescind that law. Ohio's own Attorney General called the death penalty "time consuming, costly and lethargic." He called it "broken."¹ The death penalty is not about justice; it is about vengeance. State sponsored vengeance.

The death penalty is ineffective. Murder rates in states with the death penalty are consistently higher than in states without the death penalty.² The death penalty is not a deterrent.³ For every case indicted with death penalty specifications, only 7% of cases will actually result in a death verdict. Of those cases that result in a death verdict, 40% are reversed for some kind of legal error, not necessarily innocence. After years of incarceration and lengthy appeals, 18% of death cases do not result in the

¹ Marty Schladen, Ohio AG: Clear death penalty roadblocks or get rid of it, Ohio Capital Journal.

² *Deterrence: States Without the Death Penalty Have had Consistently Lower Murder Rates*, Death Penalty Information Center, 2014, <https://deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates> (last accessed 05/05/2021).

³ *Does Capital Punishment Deter Murder? A Brief Look at the Evidence*, John Lamperti, Professor of Mathematics, emeritus, Dartmouth College, Hanover, NH (March 2010), <https://math.dartmouth.edu/~lamperti/my%20DP%20paper,%20current%20edit.htm> (last accessed 05/05/2021).

individual being executed because they are granted clemency. Overall, of the individuals that receive a death verdict, only one in six death sentences are imposed.⁴

One in five people sentenced to death are exonerated in Ohio.⁵ To paraphrase Bryan Stevenson, Executive Director of the Equal Justice Initiative, if one out of every five airplanes that took flight crashed, would we tolerate that error rate? No one would travel by plane. The folly in all of this is that throughout the death penalty process there is so much opportunity for human error, but we insist on a penalty that cannot be undone.

Ohio taxpayers pay approximately \$3 million per death penalty case⁶ compared to \$1 million per life without parole case.⁷ Right now there are approximately 36 pending capital cases in Ohio. We should ask ourselves if we favor spending approximately \$108 million to pursue death in those cases, knowing that historically only two of them will receive a death sentence. Of those two, statistically, neither of them will actually be put to death, and there is a chance that one of them is innocent. Recently, the Ohio Prosecuting Attorneys Association hypothesized, without support, that if we gave Ohioans the specifics of some death penalty eligible cases, they would choose the death penalty for that person over life without parole. Since they cite no evidence or study, given that binary choice, that may be true. But I can't help wonder, if we asked Ohioans if they would rather spend \$108 million to pursue 36 death penalties, that probably will not end in execution, or spend that \$108 million on roads and education, what would Ohioans choose? I'm convinced Ohioans would choose roads and education.

⁴ Report: 83% of Death Sentences Have Not Resulted in Executions Under Ohio's 'Lethargic' Death Penalty, Death Penalty Information Center, April 9, 2021.

⁵ *Id.*

⁶ See *the Cost of Ohio's Death Penalty*, Ohioans to Stop Execution, March 14, 2014, <http://otse.org/deathpenalty-cost/> (last accessed 05/05/2021).

⁷ *Id.*



Not to mention that according to the Juvenile Justice Information Exchange, more than 95% of death row inmates experience at least one significant trauma in their youth. If Ohio invested the \$108 million in addressing childhood trauma, we might actually prevent some of these crimes.

It has been argued that Ohio needs the death penalty to make it easier for prosecutors to get pleas to life without parole, and if Ohio abolishes the death penalty, we will see more trials in life without parole cases. OPD admits that without the death penalty, more defendants will litigate the life without parole penalty. However, the appeals associated with the death penalty are so long and time intensive compared to appeals for life without parole, Ohio will still come out ahead in terms of cost savings and efficiency in the system.

The existence of the death penalty by its nature is coercive. It is no wonder it results in extreme sentences for innocent people. Think about the threat of death. Of course, innocent people are compelled to agree to life without the possibility of parole for a crime they did not commit if that means the state will not pursue the death penalty.

Further, the gross inequalities of the death penalty cannot be understated. To start with, the murder of a white victim is more likely to be solved than the murder of a black victim, and killing a white victim is more likely to result in the death penalty than killing a black victim.⁸ Death penalty jurors are more likely to be white individuals, making it impossible for some Ohioans to have a jury of their peers.⁹ Black people are consistently and disproportionately overrepresented on death row.¹⁰ According to Death Penalty Information Center Executive Director Robert Dunham, “The death penalty is inextricably

⁸ Radley Balko, There’s overwhelming evidence that the criminal-justice system is racist. Here’s the proof., The Washington Post, September 28, 2018, <https://www.washingtonpost.com/news/opinions/wp/2018/09/18/theres-overwhelming-evidence-that-the-criminal-justice-system-is-racist-heres-the-proof/> (last accessed 05/05/2021).

⁹ STUDIES: Death-Penalty Jury Selection “Whitewashes” Juries and is Biased Towards Death, Death Penalty Information Center, May 14, 2018, <https://deathpenaltyinfo.org/news/studies-death-penalty-jury-selection-whitewashes-juries-and-is-biased-towards-death> (last accessed 05/05/2021).

¹⁰ Colleen Long, Report: Death penalty cases show history of racial disparity, Associated Press, September 15, 2020, <https://apnews.com/article/united-states-lifestyle-race-and-ethnicity-discrimination-racial-injustice-ded1f517a0fd64bf1d55c448a06acccc> (last accessed 05/05/2021).



linked to our history of slavery, of lynching, and Jim Crow segregation.”¹¹ As the rate of lynching went down, the use of the death penalty went up.¹²

The death penalty is inequitable not just by race, but also geography. “Almost half (45%) of Ohio’s executions have been from just three of the state’s 88 counties” – specifically, Hamilton, Cuyahoga, and Summit counties.¹³ However, these counties only make up approximately one fourth of Ohio’s total population.¹⁴ Whether someone is sentenced to death has less to do with the crime they committed and more to do with the victim and the location of that crime. That is not equity.

Imagine what we are asking of our fellow Ohioans who are called to jury service. Because your name was drawn at random, we are asking you to decide, as a juror, if the state should kill someone. It is not surprising that jurors on death penalty cases experience trauma, so much so that we are aware of the existence of juror support groups in Ohio. OPD attorneys have worked with jurors who have begged the Governor not to impose death in cases where they voted for the death penalty. Imagine the trauma we impose on our fellow citizens if they learn they voted for the death penalty for someone who is innocent.

Death penalty cases are not just traumatic for jurors. “A 2012 study published in the Marquette Law Review found that family members in homicide proceedings in which the death penalty was unavailable were physically, psychologically, and behaviorally more healthy and expressed greater satisfaction with the legal system than family members in death-penalty cases.”¹⁵ Former Department

¹¹ DPIC Releases Major New Report on Race and the U.S. Death Penalty, September 15, 2020, <https://deathpenaltyinfo.org/news/dpic-releases-major-new-report-on-race-and-the-u-s-death-penalty> (last accessed 05/05/2021).

¹² *Id.*

¹³ Racial and Geographic Disparities in Ohio Executions, Death Penalty Information Center, May 2014, <https://deathpenaltyinfo.org/news/racial-and-geographic-disparities-in-ohio-executions> (last accessed 05/05/2021).

¹⁴ *Id.*

¹⁵ Jurors Report Experiencing Continuing Trauma After Serving in South Carolina Death-Penalty Trial, Death Penalty Information Center, October 3, 2019.



of Rehabilitation and Corrections Directors Reggie Wilkinson and Terry Collins have talked publicly about the trauma for the Ohio Department of Rehabilitation and Correction staff who must carry out a death sentence. These are civil servants who are being forced to participate in state sponsored execution.

The OPD's death penalty attorneys experience trauma with every client and case. In order to do their jobs with the competency required by the U.S. and Ohio Constitutions, they must dive headfirst and into the lives and stories of people condemned to death. They report experiencing an unexpected emotional toll. They build relationships with the families of clients, and sometimes maintain those connections after the execution. They replay last conversations with their clients in their heads for years. Not to mention being forced to watch their clients die.

Some staff have experienced post traumatic issues after an execution. I wanted to share with you the words of one of OPD's attorney. "It has been eleven years since my client was executed by the State of Ohio. This wasn't my first execution. It wasn't even my second. But it was the hardest, because of the hope we had. Up until the day before he was executed, we thought my client would be spared. I'm still angry..." We cannot ask this of fellow Ohioans. The price is too great. We have to stop the trauma for defendants, jurors, corrections professionals, attorneys, and all Ohioans.

There is no equal justice in the death penalty and there never will be. There is only inefficiency, trauma, and state sponsored vengeance. It must end. Thank you for the opportunity to speak today to your committee. I am happy to answer questions at this time.

