

November 13, 2023

Senate Judiciary Committee  
Senate Bill 101  
Proponent—Written Testimony Only

From: Nancy Petro  
6573 Marissa Loop, #405  
Naples, FL 34108

Dear Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and members of the Senate Judiciary Committee:

I support Senate Bill 101 and focus here on what I believe is the overarching reason Ohio must stop executing: the unacceptable, significant risk of executing an innocent person.

I have studied wrongful conviction since 2005, when my husband Jim Petro, as Ohio Attorney General, was introduced to the Clarence Elkins case and became the first sitting state attorney general to intervene in an Innocence Project case. With no prior record, Clarence was convicted of murdering his mother-in-law and raping his six-year-old niece. It took years of pro bono advocacy and investigation, but, thankfully, Clarence was exonerated by DNA after serving more than seven years behind bars. DNA also unequivocally identified the perpetrator, Earl Mann, who is serving a virtual life sentence (the judge recommended Mann never be paroled even though he will be eligible at age 90).

The thought of innocent people in prison and on death row haunted Jim and me. It prompted us to write the book *False Justice—Eight Myths that Convict the Innocent* and make more than 70 presentations, many to college and law school classes.

As members of the advisory board of the National Registry of Exonerations (NRE), the established resource for wrongful conviction information, Jim and I have learned astounding facts about wrongful conviction and the death penalty population. Of the known 3,412 exonerations since 1989, 1,287 were murder cases, and, of those, 138 had been sentenced to death before they were exonerated.

Similar troubling findings prompted Governor George Ryan, formerly a death penalty supporter, to commute the death sentences of 156 inmates in Illinois in 2003. Since reinstatement of the death penalty there in 1977, a gubernatorial commission reported that twelve inmates had been executed and thirteen had been released. The commission noted that of those released, “All thirteen cases were characterized by relatively little solid evidence connecting the charged defendants to the crimes.”

Esteemed University of Michigan Law professor, Samuel Gross, co-founder of the NRE, led a published research study that utilized survival analysis and known exonerations among those who had been sentenced to death to make the determination that, if their sentences remained indefinitely, at least 4.1 percent of the death row population would be exonerated.

Applied to the general prison population of roughly two million, this would suggest 82,000 prisoners could be exonerated. However, Professor Gross suggests that we cannot assume this percentage for all crimes, because “there are strong theoretical reasons to believe that the rate of false convictions is higher for murders in general, and for capital murders in particular, than for other felony convictions.”

U.S. Supreme Court Justice David H. Souter (1990-2009) agreed, writing in his dissenting opinion in *Kansas v March* that homicide cases yield “an unusually high incidence of false conviction, probably owing to the difficulty of investigating without help from the victim, increased public pressure to solve homicides, and incentives for the guilty to frame the innocent.” In fact, of the six main contributors to wrongful conviction, only in homicides is the most frequent contributor perjury/false accusation.

With growing awareness of exonerations of death row inmates often proven by DNA analysis of crime scene evidence, the national discourse on the death penalty has been reframed from the difficult morality discussion to conviction accuracy and the risk of wrongful execution, a major factor in the trend of states abandoning this risky practice.

Ohio does not want to be on record as having executed an innocent person. I respectfully urge you to pass S.B. 101.

Sincerely,



Nancy Petro