

On behalf of Cuyahoga County Prosecutor Michael C. O'Malley  
Saleh Awadallah  
Assistant Prosecuting Attorney  
Supervisor, Homicide Investigations and Cold Case Unit  
November 13, 2024

Chairman Manning, Vice-Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee. Thank you for the opportunity to provide opponent testimony today on Senate Bill 101.

Ohioans have historically supported capital punishment for the “worst of the worst” offenders. As long as serial killers like Anthony Sowell<sup>1</sup>, mass murderers like George Brinkman<sup>2</sup> and child killers like Christopher Whitaker<sup>3</sup> exist capital punishment should remain as a sentencing option in Ohio.

And now in an era where there has been an alarming increase in mass casualty incidents, there is a contemporaneous and systemic effort to remove capital punishment across the country for the worst of the worst.<sup>4</sup>

On one of the only times Ohioans had the opportunity to vote on capital punishment, the Ohio Constitution was amended *to expedite* the appellate process for death penalty

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<sup>1</sup> Anthony Sowell, known as the “Cleveland Strangler,” was sentenced to death for each of the eleven women he brutally murdered: Tonia Carmichael, Nancy Cobbs, Tishana Culver, Crystal Dozier, Telacia Fortson, Amelda Hunter, Leshanda Long, Michelle Mason, Kim Yvette Smith, Janice Webb, and Diane Turner. Sowell hid the decomposing bodies of his victims at his home in Cleveland. Sowell was not the only serial killer on Ohio’s death row. Michael Madison, who is currently on death row for the murder of three women in East Cleveland, told a friend that he was “aggravated” with women and wanted to “Anthony Sowell a bitch.” *State v. Madison*, 160 Ohio St.3d 232, 2020-Ohio-3735. These are only examples from Cuyahoga County, but there are others on Ohio’s death row including Richard Beasley, Gerald Hand, and William Sapp.

<sup>2</sup> George Brinkman received three death sentences in Cuyahoga County for the murders of Suzanne Taylor and her daughters, Taylor Pifer and Kylie Pifer. Brinkman forced all three onto a bed, stabbed Suzanne and slit her throat, smothered Taylor to death with a pillow, and then strangled Kylie with a phone cord. Brinkman received two more death sentences in Stark County for the murders of Rogell and Roberta John, whom he shot to death. Sadly, there are *many* mass-murderers on Ohio’s death row.

<sup>3</sup> Christopher Whitaker received a death sentence for the murder of a 14-year-old girl. The girl was walking to school when Whitaker abducted her off the street, took her to an abandoned home, raped her, and tortured her to death with various construction tools including a drill. Whitaker is one of *many* child-killers on Ohio’s death row.

<sup>4</sup> [www.cnn.com/2021/04/18/us/mass-shootings-since-march-16/index.html](http://www.cnn.com/2021/04/18/us/mass-shootings-since-march-16/index.html)

cases.<sup>5</sup> Ohioans should have a direct say on whether to keep or abolish the death penalty.

Not all murders in Ohio are eligible for the death penalty. Only offenders charged with aggravated murder and one (or more) of ten different aggravating circumstance specifications are charged with a capital offense.<sup>6</sup> 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, or the murder happened during specific violent offenses.<sup>7</sup>

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 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.<sup>8</sup> Since 2012, Cuyahoga County has pursued capital punishment in less than two percent of indicted aggravated murder cases.<sup>9</sup> 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.

Since 2017 the Cuyahoga County Prosecutors Office has pursued the death penalty in only six cases. During that same time period there were over 1500 homicides

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[https://ballotpedia.org/Ohio\\_Death\\_Penalty\\_Appeals,\\_Amendment\\_1\\_\(1994\)#cite\\_note-cmlaw-1](https://ballotpedia.org/Ohio_Death_Penalty_Appeals,_Amendment_1_(1994)#cite_note-cmlaw-1)

<sup>6</sup> R.C. 2901.03(B) defines a “capital offense” in Ohio. R.C. 2929.04(A) lists specifications of aggravating circumstances.

<sup>7</sup> R.C. 2929.04(A)

<sup>8</sup> <https://www.cleveland.com/open/2019/12/cuyahoga-county-leads-the-nation-in-death-penalty-sentences-study-finds.html>

<sup>9</sup> Since 2012 there have been five hundred and fifty-seven aggravated murder cases indicted in Cuyahoga County and only ten cases that were presented to a trial jury or three judge panel as death penalty cases.

in Cuyahoga County. And in Ohio's most diverse and liberal county, the jury and/or the courts imposed the death penalty in five of those six cases.<sup>10</sup>

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 offenses is entitled to the appointment of counsel consistent with the Ohio Supreme Court's Rules of Appointment of Counsel in Capital Cases.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

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.<sup>14</sup> 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.

The above are some, but certainly not all, of the extra protections afforded capital offenders. These protections often lead to the frequently heard criticism of capital punishment: it takes too long. Indeed, the Ohio Attorney General's 2020 Capital Crimes Annual Report referred to "the fact that the system has grown increasingly time-

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<sup>10</sup> *State v. Armond Johnson* 2024-Ohio-158 – Defendant Armond Johnson was convicted of shooting and killing twenty-five-year-old Takerya Collins inside her home and then setting fire to the home killing his own six-year-old son (AJ) and another two-year-old child (AS). After setting the fire he encountered and shot to death thirty-five-year-old next door neighbor David Cousin who was walking to his home after working a long day. The jury recommended life without parole.

<sup>11</sup> <https://www.supremecourt.ohio.gov/Boards/capitalCases/capitalCases.pdf>

<sup>12</sup> Appt.Coun.R. 3.01(A)

<sup>13</sup> 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.

<sup>14</sup> R.C. 2953.21

consuming, costly and lethargic.”<sup>15</sup> But, as Justice Clarence Thomas has said, “[i]t is incongruous to arm capital defendants with an arsenal of ‘constitutional’ claims with which they may delay their executions, and simultaneously to complain when executions are inevitably delayed.”<sup>16</sup> By and far, the delay is because of the seemingly endless appeals and postconviction filings taken by the defendants. The courts often move slowly on capital cases after conviction because there is less urgency knowing that executions are likely decades away.

Should defense-created delay be a reason to abolish the death penalty, or should some action be taken so that a sentence is timely carried out? Rather than explore execution alternatives or fix the delays in capital punishment, we get proposed legislation that directly or indirectly limit capital punishment.

That is frustrating to the many criminal justice stakeholders: the families of the victims, who have a right under the Ohio Constitution to proceedings free from unreasonable delay; the prosecutors, who have their discretion undermined; and the juries, who are exposed to horrific fact patterns and then tasked with making extraordinary difficult moral decisions.

The two things that are clear are 1) Ohioans have time and time again supported capital punishment for serial killers, mass-murderers and child-killers, and 2) if the death penalty is abolished, the next movement will be to eliminate life without parole as a sentencing option.<sup>17</sup>

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.

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<sup>15</sup> <https://www.ohioattorneygeneral.gov/Files/Reports/Capital-Crimes-Annual-Reports/2020-Capital-Crimes-Annual-Report>

<sup>16</sup> *Knight v. Florida*, 528 U.S. 990, 992 (1999)(Thomas, J., concurring in denial of certiorari).

<sup>17</sup> For the “worst of the worst,” life without parole is not an adequate alternative. Consider August Cassano, who was serving a life sentence for aggravated murder when he stabbed his 22-year-old cellmate to death 75 times with a knife he made in prison.