



# Office of the Ohio Public Defender

Elizabeth R. Miller, *State Public Defender*

## **Senate Bill 101 Proponent Testimony**

Kimberly Rigby, Managing Counsel

Senate Judiciary Committee

December 4, 2024

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

Thank you for the opportunity to testify in support of Senate Bill 101 ("SB 101") on behalf of the Office of the Ohio Public Defender (OPD). I am Kimberly Rigby, Managing Counsel for the Death Penalty Department at the OPD and I urge this committee's support of SB 101 and all efforts to abolish the death penalty in Ohio. The time has come to extinguish this inefficient, ineffective, and inhumane practice.

I am writing this from the perspective of someone who has done almost strictly death penalty appellate work in the State of Ohio for the past 20 years. Over the years, I have represented men who have been relieved of their sentences of death and are living out their sentences of life in prison. I have also represented men who were executed by the State of Ohio. The differences between these men, and their cases, was mostly luck. Through these lived experiences, I can attest that the Attorney General is correct when he calls our system "broken."<sup>1</sup>

### **Ohio's Death Penalty is inefficient and wasteful.**

The death penalty is the most inefficient and wasteful government program in existence in Ohio. If any other law was this expensive and this flawed 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."<sup>2</sup>

Ohio taxpayers pay approximately \$3 million per death penalty case<sup>3</sup> compared to \$1 million per life without parole case.<sup>4</sup> And for every 100 death penalty cases that are brought, prosecutors will only be successful in obtaining a death verdict 7 times.<sup>5</sup> This is a failure rate exceeding 90%. Each and every failure costs Ohio an extra \$2 million dollars. And once convicted and sentenced, the failure continues. 189 Ohio death sentences have been overturned by courts due to prejudicial error rendering the trial a constitutional failure.<sup>6</sup> A total of 205 people have been removed from death row by judicial or clemency orders.<sup>7</sup> This constitutes over 46% of all death sentences.



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As the Attorney General noted, some estimate that having a death penalty costs Ohioans between “\$121 million to \$363 million.”<sup>8</sup> The Attorney General says that the “costs of capital punishment are the costs of ensuring justice: that we get it right, that mistakes are corrected, and that the worst of the worst offenders never offend again – even in prison.”<sup>9</sup> Even if Ohio’s death penalty system delivered on that lofty promise, it would be an incredibly expensive program. Sadly, that program fails to achieve its essential purpose. The Attorney General aptly noted, Ohio devotes “a stunning amount of money to spend on a program that doesn’t achieve its purpose.”<sup>10</sup>

You have to wonder how Ohioans would respond to this question: “Would you rather the State spend these millions and millions of dollars to pursue death penalties, with these kinds of failure rates, that probably will not end in execution, or spend those millions on roads and education?” The vast and overwhelming majority of Ohioans would choose roads and education. 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 millions in addressing childhood trauma, maybe we could actually prevent some of these crimes. And finally, think of the millions of dollars we would have to provide services to victims . . . real services, not false promises of a future execution that will most likely never occur.

### **Ohio’s Death Penalty is ineffective.**

The death penalty is ineffective. Murder rates in states with the death penalty are consistently higher than in states without the death penalty.<sup>11</sup> The death penalty is not a deterrent.<sup>12</sup> From 1981 – 2023, Ohio sentenced 336 people to death.<sup>13</sup> However, due to a number of reasons, just one in every six of those sentences has been executed.<sup>14</sup> As of the end of 2023, 21 individuals have had their sentence commuted; 40 individuals have died of natural causes or committed suicide; 9 individuals were found to have an intellectual disability and were not eligible for the death penalty under the constitution and 6 individuals were found to have a serious mental illness at the time of the offense and had their sentence converted to life without parole. Overall, of the individuals that receive a death verdict, only one in six death sentences have been imposed.<sup>15</sup>

If the State of Ohio is going to kill individuals as a means to demonstrate that our State provides justice, then Ohioans have every right to expect flawless accuracy in who we execute. Ohio cannot meet this standard. Since 1974, we have executed 56 individuals in Ohio, and during that same period we have had 11 individuals who were sentenced to death exonerated.<sup>16</sup> That means for every 5 individuals Ohio executed since 1976, we had one individual on death row exonerated. Ohio’s death penalty system is, indeed, “a program that doesn’t achieve its purpose.”<sup>17</sup>

Any amount of error when Ohio seeks to take the life of an individual is unacceptable. It’s a mistake we cannot correct, and it is antithetical to Ohio upholding justice and fairness. To paraphrase an



analogy by Bryan Stevenson, Executive Director of the Equal Justice Initiative, if one out of every five airplanes that took flight crashed, would Ohio tolerate that error rate? Of course not. No one would travel by plane. There would be calls to overhaul the airline industry. Yet with capital punishment there are countless opportunities for human error, and we continue to insist on a penalty that may be faulty and cannot be undone.

### **Ohio's Death Penalty is inhumane.**

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. And we are asking you to do so in a system that is so broken and unworkable that 90% of the time, the death penalty was not appropriate, and constitutional error will occur in over 40% of the cases during the trial and penalty phases. This is the flawed and broken system we ask jurors to make sense of. It is not surprising that jurors on death penalty cases experience trauma.<sup>18</sup> Imagine the trauma we could 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."<sup>19</sup>

Members of our Correctional Staff also suffer trauma during an execution. Of note, former Department of Rehabilitation and Corrections Directors Reginald Wilkinson and Terry Collins both spoke out against the use of the death penalty in Ohio and have spoken about the trauma it has inflicted on prison staff who have witnessed and taken part in executions.<sup>20</sup>

The lawyers who work in this system suffer trauma, and I have experienced this trauma myself. Attorneys who I work with every day in the Death Penalty Department of the OPD have shared their stories of the trauma they experienced and that they have seen inflicted on others by this system.

I remember the vivid details of my own firsthand experience with an execution. I had never witnessed an execution before, however I quickly agreed when asked. I arrived that day—not knowing exactly what to expect. I was escorted back to a small room where the attorneys all waited. Across the yard, you can see the execution chamber. I visited with my client, said my goodbyes, and we prayed together. Afterwards, I was taken into the small execution chamber and seated by the glass. I was prepared to watch my client die. They first tried to find a vein in his arm. They moved to the other arm. They moved to his ankles—searching for a usable vein. They made attempts and poked him multiple times. As they struggled to find a vein, my client laid there and attempted to help them—pointing out possibly better veins. After a half hour,



which seemed like an eternity, of watching DRC employees poking and prodding my client and never getting an appropriate IV, they gave up and called the execution off. Afterwards, we were allowed to talk to our client again. It was surreal—like talking to a ghost.

Despite the execution not even happening, it was obvious that it was not just myself and my client that was traumatized; the victim's family was as well. The DRC employees who tried their hardest to do their job looked exhausted. My client died less than a year later of natural causes. He'd been very ill leading up to the execution, and I believe this experience took such a toll that he never recovered.

A colleague of mine, Rachel Troutman, Supervising Attorney of the Death Penalty Department, also recounted memories of the executions that she witnessed:

Watching someone be put to death is surreal. One minute they are talking, moving, breathing, and very much alive. In just a span of minutes, there is no more movement at all. The stillness always struck me. What I could not prepare myself for was the rest of it. The people who just became collateral damage, and bearing witness to some of the most raw and devastating emotions.

One of my clients had what we believed to be a very good chance at clemency. We had found some new witnesses and new evidence that changed the picture quite a bit. I remember his mother telling me about her new hope -- that she believed I was going to save her son's life. I had gotten to know his 17-year-old daughter somewhat well. I will never forget the image of her at my client's clemency hearing -- with her big white bow in her hair, having taken the bus all the way from Youngstown to Columbus so she could be there in front of the parole board on behalf of her dad. Three of the jurors who had previously voted to convict and sentence him to death were now desperately trying to convince the Governor not to go through with the execution. Two of them called me regularly and begged me to do everything I could to save him.

The day before the execution, we still had not heard from the Governor, and my client was transported to the death house. We were permitted to visit with our clients the night before the executions, as well as the morning of, so I was driving to the death house that evening when I got the call from the Governor's counsel. He would not spare my client's life. I broke the news to my client when I arrived for my client visit. There's no way to sugar coat that, and the only thing I could do was try and make it just a tiny bit easier on him. So when he asked me to tell his mother, his sister, his friend, his children that he was going to die, I made each one of those phone calls and I broke a little more each time I said the words.



Then I called the jurors. I couldn't let them find out from the news that he was going to be executed. I comforted them as best I could, but I cannot imagine the guilt they carry. I still struggle with the fact that my clients' loved ones were left with no recognition of the fact that they, too, are victims.

These are only two examples of the horrific experiences the death penalty imposes on Ohioans. There are countless more experiences left untold.

## Conclusion.

The death penalty is inefficient, ineffective, and inhumane. The Attorney General concludes: "This system [capital punishment] is a testament to government impotence."<sup>21</sup> As stated, I concur and reiterate, this is the most wasteful government in existence in Ohio. The death penalty also creates additional victims of this process—of the jurors, of the corrections officers, of our client's loved ones, of anyone touched by this atrocity.

Ohio can be, and should be, a State that upholds the tenets of justice far better by moving beyond our broken capital punishment system and, instead, imposing life without parole. Thank you for the opportunity to provide this testimony.

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<sup>1</sup> Marty Schladen, *Ohio AG: Clear death penalty roadblocks or get rid of it*, Ohio Capital Journal. Ohio Attorney General's 2023 Capital Crimes Report, p.5.

<sup>2</sup>Marty Schladen, *Ohio AG: Clear death penalty roadblocks or get rid of it*, Ohio Capital Journal. Ohio Attorney General's 2023 Capital Crimes Report, p.5.

<sup>3</sup>See *The Cost of Ohio's Death Penalty*, Ohioans to Stop Execution, March 14, 2014, <http://otse.org/deathpenalty-cost/> (last accessed 12/02/2024).

<sup>4</sup>*Id.*

<sup>5</sup>OPD Capital Study 2010.

<sup>6</sup>Death Penalty Information Center, Death Penalty Census Database: <https://deathpenaltyinfo.org/database/sentences?jurisdiction-type=State&jurisdiction=Ohio&sentence-outcome=Retrial+Barred>. (Last accessed 12/02/2024).

<sup>7</sup>Death Penalty Information Center, Death Penalty Census Database: <https://deathpenaltyinfo.org/database/sentences?jurisdiction-type=State&jurisdiction=Ohio&sentence-outcome=Retrial+Barred>. (Last accessed 12/02/2024).

<sup>8</sup> Ohio Attorney General's 2023 Capital Crimes Report, p. 5. The 2024 Capital Crimes Annual Report is available online at: <https://www.ohioattorneygeneral.gov/Files/Reports/Capital-Crimes-Annual-Reports/2023-Annual-Report> WEB.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup>*Murder Rate of Death Penalty States Compared to Non-Death Penalty States*, Death Penalty Information Center, <https://deathpenaltyinfo.org/facts-and-research/murder-rates/murder-rate-of-death-penalty-states-compared-to-non-death-penalty-states>. (Last accessed 12/02/2024).



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<sup>12</sup>*Does Capital Punishment Deter Murder? A Brief Look at the Evidence*, John Lamperti, Professor of Mathematics, emeritus, Dartmouth College, Hanover, NH (March 2010), [https://chance.dartmouth.edu/teaching\\_aids/books\\_articles/JLpaper.pdf](https://chance.dartmouth.edu/teaching_aids/books_articles/JLpaper.pdf). (Last accessed 12/02/2024).

<sup>13</sup>Office of the Ohio Attorney General's 2023 Capital Crimes Annual Report, pg. 5.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup><https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/ohio> (Last accessed 12/02/2024);

<https://deathpenaltyinfo.org/database/innocence?state=Ohio>. (Last accessed 12/02/2024).

<sup>17</sup> Ohio Attorney General's 2023 Capital Crimes Report, p. 5.

<sup>18</sup>*Jurors' Emotional Reactions to Serving on a Capital Trial*, Michael E. Antonio, Ph.D., <https://secure.in.gov/ipdc/files/judicature-article-on-juries.pdf> (last accessed 12/02/2024).

<sup>19</sup>*Murder Victims' Family Members Speak of Moving Forward, Without the Death Penalty*, Death Penalty Information Center, <https://deathpenaltyinfo.org/news/murder-victims-family-members-speak-of-moving-forward-without-the-death-penalty> (Last accessed 12/02/2024).

<sup>20</sup>[https://www.wcpo.com/news/opinion/ohios-former-prisons-chief-the-death-penalty-isnt-worth-fixing-;](https://www.wcpo.com/news/opinion/ohios-former-prisons-chief-the-death-penalty-isnt-worth-fixing-) (Last accessed 12/02/2024); Ohioans to Stop Executions, *A Crumbling Institution: Why Ohio Must Fix or End the Death Penalty*; [https://otse.org/wp-content/uploads/2017/05/ACrumblingInstitution\\_3-30-2105\\_OTSEWeb.pdf](https://otse.org/wp-content/uploads/2017/05/ACrumblingInstitution_3-30-2105_OTSEWeb.pdf). (Last accessed 12/02/2024).

<sup>21</sup>Ohio Attorney General's Capital Crimes Report, p. 7.

