



OHIO
JUSTICE
& POLICY
CENTER

215 EAST 9TH STREET
SUITE 601
CINCINNATI, OHIO 45202

360 S. THIRD STREET
COLUMBUS, OHIO 43215

(T) 513-421-1108
(F) 513-562-3200
contact@ohiojpc.org
www.ohiojpc.org

EXECUTIVE DIRECTOR
DAVID SINGLETON
Attorney at Law

FOUNDER
ALPHONSE GERHARDSTEIN

To: House Criminal Justice Committee
From: Kevin Werner, Policy Director
Date: September 23, 2021
Re: Proponent Testimony for House Bill 183

Chairman LaRe, Vice Chair Swearingen, Ranking Member Leland and members of the House Criminal Justice Committee, thank you for the opportunity to testify today on House Bill 183. My name is Kevin Werner and I am the policy director at the Ohio Justice & Policy Center, a nonprofit law firm whose mission is to promote fair, intelligent, and redemptive criminal justice systems. OJPC strongly supports House Bill 183.

Forty years ago, the legislature revived a death penalty statute after the previous capital punishment statute—in effect from 1974 to 1978—was invalidated by the United States Supreme Court decision in *Lockett v. Ohio*. Legislators who crafted that bill, Senate Bill 1 of the 114th General Assembly, genuinely believed they designed a system that would deter violent crime, help families of victims heal, reliably determine those most deserving, be fairly applied and save tax dollars.¹ But what architects of the death penalty understand today is that the system is broken beyond repair and it must be repealed. It is noteworthy that those architect lawmakers who have expressed the most concern are people who dealt directly with the death penalty system up close. A Governor, attorneys general, supreme court justice, and many others have raised grave concerns. These individuals saw the operationalization of the law they helped create and the overwhelming evidence of the system's failures.

Ohioans have had 40 years of experience dealing with the current death penalty law. Here are the facts:

Death penalty trial costs are exponentially higher than non-capital cases. The *Akron Beacon Journal* examined and compared the costs of two aggravated murder trials—one with death specification (meaning one where the death penalty was sought) and one without death specifications. The trial or the death penalty case cost the county more than \$267,000 compared to less than \$20,000 for the non-

¹ Bob Taft, Jim Petro and Lee Fisher, *The Columbus Dispatch*, "Former governor, attorneys general: Ohio death penalty broken, costly and unjust. It must be repealed." March 9, 2021.



death case trial.² In other words, the death penalty case cost taxpayers more than ten-times the price of a non-death penalty case. The cost data in this instance came directly from the Summit County Common Pleas Court.

The death penalty system routinely sentences innocent people to death. The fact that innocent people have been sentenced for crimes for which they had zero involvement is, in and of itself, reason to repeal the death penalty. In the modern era, at least 11 people have been wrongfully convicted and sentenced to death in Ohio.³ Those wrongfully convicted men spent a combined 216 years incarcerated for crimes they did not commit. We note the adverbial phrase is at least eleven because given Ohio's track record, we have no reason to believe there are not more innocent people sitting on death row today. The wrongful conviction problem spreads even farther when we look at how many instances the state sought the death penalty but didn't get it where the individual was later exonerated. In *at least* four other cases, Ohio prosecutors sought the death penalty for men later proven innocent.⁴

Racial bias is pervasive in the death penalty system. This fact may be difficult to acknowledge, but is one we must face head on and with clear eyes. I want to be clear in that committee members understand what is meant by statements about the death penalty being racist. I am not saying individual actors within the system are racist, rather the outcomes the system produces skew disproportionately along racial lines. For example, according to Ohioans to Stop Executions, people of color make up 15% of Ohio's statewide population. But people of color account for 33% of the people executed by Ohio. And people of color make up 56% of Ohio's death row. Seventy-two percent of people exonerated in Ohio are people of color. In other words, relative to population demographics, people of color are overrepresented as

² Warsmith, Stephanie. *Akron Beacon Journal*, "Death penalty needed for 'worst of worst' chief counsel for Summit County prosecutor says," February 19, 2017.

³ **Wiley Bridgeman**, convicted in 1975, was incarcerated for 38 years; **Ricky Jackson**, convicted in 1975, was incarcerated for 39 years; Ronnie Bridgeman, now **Kwame Ajamu**, convicted in 1975, was incarcerated for 28 years; **Thomas Pearson**, convicted in 1976, was incarcerated for three years; **Gary Beeman**, convicted in 1976, was incarcerated for three years; **Timothy Howard**, convicted in 1976, was incarcerated for 27 years; **Gary Lamar James**, convicted in 1976, was incarcerated for 27 years; **Dale Johnston**, convicted in 1984, was incarcerated for six years; **Derrick Jamison**, convicted in 1985, was incarcerated for 20 years; **Charles Tolliver**, convicted in 1986, was incarcerated for two years and **Joe D'Ambrosio**, convicted in 1989, was incarcerated for 23 years.

⁴ David Ayers (2011); Randy Resh (2007); Clarence Elkins (2005); Kim Hairston (1995).



defendants in the capital system and disproportionately adversely impacted by the death penalty system. The academic research in this topic is robust and glaring. The Death Penalty Information Center concisely and accurately describes the role race plays in the death penalty noting “racial bias against defendants of color and in favor of white victims has a strong effect on who is capitally prosecuted, sentenced to death, and executed.”

The death penalty is harmful to co-victims. If no other aspect of this testimony resonates with you, I hope it is this fact. People who experience the shock and trauma of having a loved one murdered deserve our support and access to resources. If you spend time talking with co-victims, they will often tell you they need three things: they need a justice system that is swift and certain, and they need answers about what happened to their father, their mother, their sister or their brother. But what the death penalty system actually does is force them to relive the worst day of their lives again and again through decades of twists, turns and unwanted media attention. They run the gauntlet of state and federal reviews, reversals in part, upheld in other parts, remands and do-overs because fidelity to the process is paramount when life is on the line. Victims’ family members are traumatized and retraumatized, forced to live in a state of suspended animation. They are given a false premise that justice is equated to having an execution. They are told that closure will come with an execution, only to learn there is no such thing as closure.⁵ There is, however, an empty chair at the table. They may be told healing will come with an execution. But what about the time and space between the offense and an execution? I have personally met and call many people my friends who have experienced the murder of a family member. I cannot think of a single person who said she wants to walk around filled with anger, hate and trauma for the next 20 or 30 years of her life.

Ending Ohio’s death penalty will save taxpayers millions of dollars each year. We can have certainty we never execute an innocent person by eliminating the death penalty. Racially biased outcomes can be eliminated and in doing so Ohio can move closer to a system where equal justice under law means the same thing to all people. Repealing Ohio’s death penalty will help alleviate some of the trauma, pain and anguish co-victims routinely and repeatedly experience.

⁵ Equal Justice USA, The Closure Myth: How the death penalty fails victims’ families. Last accessed June 15, 2021. Available at <https://ejusa.org/resource/the-closure-myth/>



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We know so much more today than we did in 1981. We know that the death penalty is just not worth it. We can and must do better for co-victims and their families and one concrete step we can take is to end the death penalty.

Thank you for the opportunity to present testimony in favor of Senate Bill 103 and I welcome any questions.

Kevin Werner
Policy Director
kwerner@ohiojpc.org