

Senate Judiciary Committee  
Senate Bill 101 (to abolish Ohio's death penalty)  
Written Testimony Only—Proponent

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

My name is Bernard A. Smith, who resides in Akron, Ohio (Summit County). I urge the Senate Judiciary Committee to approve SB 101 and forward it to the full Senate floor.

As a retired federal prosecutor after 31 years of experience, I know that a prosecutor's nightmare is to convict an innocent person. Convicting an innocent person and, additionally, having that defendant sentenced to death is the worst possible scenario of injustice. In the United States since 1976, 190 defendants have been sentenced to death only to be exonerated years or decades later. Eleven of those exonerations involving defendants sentenced to death occurred right here in Ohio. The risk of executing an innocent person, an action that cannot be changed once done, is sufficient reason to abolish Ohio's death penalty.

Second, prosecutors do not need capital punishment in order to litigate first degree murder dockets. Over 20 other states have abolished the death penalty and are still obtaining convictions and guilty pleas in first degree murder cases. Indeed, the state of Michigan, comparable in population to Ohio, has not had the death penalty since 1846—literally 177 years—and its prosecutors continue successfully to litigate first degree murder cases. Capital punishment should not be retained as a leverage device to extract guilty pleas. For if a prosecutor thinks that a sentence less than death is a just final result in a first degree murder case and would take a guilty plea to a non-death sentence, then that prosecutor should not be charging death penalty specifications at all. Obtaining a capital indictment and then negotiating a guilty plea to a non-death sentence is a classic example of over-charging because the prosecutor himself knows that a sentence less than death is a just and fair resolution. Retaining the death penalty for prosecutorial “bargaining chip” purposes would be raw legal cynicism.

Third, capital punishment is a legal outlier in the context of intentional killings. The law has always recognized a strict necessity exception to the prohibition against killing another person: (1) self-defense when facing imminent threat of deadly force by another, (2) defense of a third party facing a similar threat and (3) soldiers in armed combat. To this list during the colonial period of our history might be added capital punishment, because secure prison systems had not yet been invented. Today, any issue concerning lack of adequate prisons has disappeared because Ohio has maximum security prisons to incapacitate murderers. Thus, capital punishment

is unnecessary to protect the public and does not satisfy the test of strict necessity which the law applies to all other intentional killings. Given modern prison security, the set of murderers who must be executed to protect society is a null set. At root, the death penalty is not about murderers who did not respect human life. Instead, capital punishment is about us. Will we, as a society, respect human life (regardless of the offender's wrongful conduct) and allow intentional killing only when it is strictly necessary to do so?

Fourth, capital punishment in Ohio is imposed in racially discriminatory fashion. Despite all judicial efforts to render the death penalty system fair, the Ohio Supreme Court's 2014 Joint Task Force to Review the Administration of Ohio's Death Penalty stated (in a note to Recommendation 29) that offenders who killed white persons were 3.8 times more likely to be sentenced to death than defendants who killed black persons. Imposing the death penalty based upon the race of the victim is intolerable because it sends the wrongful message that Ohio values the lives of white persons more than the lives of minority persons because it systematically imposes a harsher penalty when a white person is murdered. Such systemic racial discrimination should be morally condemned.

Finally, in sponsor testimony concerning SB 101, Senator Steve Huffman testified that it takes three times more money to convict and execute an offender than to imprison him for life. Ohio literally is wasting millions of dollars annually on death penalty litigation where imprisonment suffices to protect the public. That wasted money could be put to other purposes or simply saved. Ohio's capital punishment system makes no economic sense.