

November 15, 2023

To: Senate Judiciary Committee

Re: Senate Bill 101

Proponent—Written Testimony Only

From: Margery Koosed, Professor of Law Emerita, University of Akron School of Law.
Resident of South Euclid, OH

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

Thank you for the opportunity to submit this testimony. My research and writing over 47+ years as a Law Professor has often focused on the death penalty.¹ Speaking for myself and not the University of Akron, I write to wholeheartedly support SB 101 as **OHIO'S DEATH PENALTY SYSTEM WASTES PRECIOUS FUNDS AND PROVIDES NO SOCIETAL BENEFIT.**

In his 2022 Annual Capital Crimes Report at p.5, Attorney General David Yost cited the LSC Fiscal Note for H.B.136 (Dec. 11, 2020) finding capital cases elsewhere cost \$1 million to \$3 million dollars *more per case* than life imprisonment ones, adding:

If these estimates apply to Ohio, then the extra cost of imposing the death penalty on the 128 inmates currently on Death Row might range between \$128 million to \$384 million....That's a stunning amount of money to spend on a program that doesn't achieve its purpose. This system satisfies nobody...[T]he state goes on pointlessly burning through enormous taxpayer resources...Ohio's current system...produces chum, waste, and ...nothing else...².

Ohio has received no 'return on its vast investment' in capital cases. Deterrence and retribution, the asserted justifications/societal benefits are unrealized.

Deterrence of violent crime: Early on, a 1961 study by the Ohio LSC examined the previous 50 years and found no evidence that executions have any discernible effect on

¹ I also served on the Ohio State Bar Association's Criminal Justice Committee that reviewed Ohio's death penalty in the 1990's, and from 2003 to 2007 on the American Bar Associations' Ohio Death Penalty Assessment Team which produced the report "*Evaluating Fairness and Accuracy in State Death Penalty Systems: The Ohio Death Penalty Assessment Report, An Analysis of Ohio's Death Penalty Laws Procedures, and Practices*", in 2007. I was an informal resource person and consistent attendee at the meetings of the Ohio Supreme Court and Ohio Bar Association's Joint Task Force on Administration of the Death Penalty, from 2011 to 2014.

²<https://www.ohioattorneygeneral.gov/Files/Reports/Capital-Crimes-Annual-Reports/2022CapitalCrimesAnnualReport>, at 5.

homicide rates.³ More recently, in 2012, the National Academy of Science's National Research Council evaluated all the deterrence studies and found no evidence the death penalty was a better deterrent than the alternative sentence of life without parole.⁴ Indeed, states without the death penalty have had lower homicide rates.

Retribution: Increasingly victim's families recognize that the death penalty system extends and impairs their healing process.⁵ Support services in the form of grief counselling, mental health services, and financial assistance would better meet their needs,⁶ as would solving the crimes that damaged other victims' families. But funds for these measures are diverted to a broken death penalty system.

This broken system has invested hundreds of millions of tax dollars in pursuing executions that haven't materialized. In the forty years since enactment in 1981, prosecutors have sought death sentences through filing 3,365 capital indictments,⁷ committing to seek the state's highest punishment against thousands of criminal defendants. Yet, just 56 of those 3,365 indictments have resulted in an execution – a 1.6% success rate.

In what universe would a system that costs millions more per case be maintained when it achieved its purpose less than 2% of the time?

A system that fails to achieve its objective 98.4% of the time and fails to realize any of its purported societal/penological goals is not worth keeping, and surely not worth the massive investment Ohioans have made in it. The only fiscally responsible action possible in these circumstances is to pass S.B. 101.

³ [Ohio Legislative Service Commission Staff Research Report No. 46 (1961), see also William Bailey, *The Deterrent Effect of the Death Penalty for Murder in Ohio: A Time Series Analysis*, 28 *Cleve. St. L. Rev.* 51, 68 (1979).

⁴ See <https://deathpenaltyinfo.org/news/deterrence-national-research-council-concludes-deterrence-studies-should-not-influence-death-penalty-policy>. See also *Glossip v. Gross*, 135 S.Ct. 2726, 2767-2769 (2015) (Breyer, J., dissenting) (no study in the last thirty years has found deterrent benefits of the death penalty). See also Death Penalty Information Center, "Smart on Crime: Reconsidering the Death Penalty in a Time of Economic Crisis" 22 (2009) ["Neither police chiefs, nor criminologists, nor the American public believe that the death penalty serves as a better deterrent to murder than a sentence of life in prison."], available at <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/smart-on-crime-reconsidering-the-death-penalty-in-time-of-economic-crisis>

⁵ Susan Bandes, "The Death Penalty and the Misleading Concept of 'Closure'" (Jan. 8, 2021), <https://thecrimereport.org/2021/01/08/the-death-penalty-and-the-misleading-concept-of-closure/>.

⁶ In 2018, the Ohio victim compensation fund provided economic assistance to just 3.23% of the applications it accepted. Ohio ranked 46th out of the 50 states and District of Columbia in victim compensation. Matthew Richardson, "Some States Make It Easy To Pay For A Funeral After A Murder. Others Do Not", KUNC Radio (Feb. 28, 2020), <https://www.kunc.org/2020-02-28/some-states-make-it-easy-to-pay-for-a-funeral-after-a-murder-others-do-not> . See also Intercommunity Justice and Policy Center, "At All Costs: The High Cost of the Death Penalty in Hamilton County and the Extreme Disparity It Drives", <https://ijpcincinnati.org/wp-content/uploads/2020/12/12.7-At-All-Costs-Draft.pdf>, at 7 (discussing needed restorative services that will also reduce crime).

⁷ Ohio Facts 2020, at 100. See also Attorney General's 2022 Report at 5, also detailing how 44% of the 341 sentenced to death have been removed from the row by court action, clemency, or death. That percentage will only grow.

