



# Office of the Ohio Public Defender

Timothy Young, State Public Defender

## Senate Bill 101 Proponent Testimony

Tim Young, State Public Defender

Senate Judiciary Committee

November 15, 2023

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. I am State Public Defender Tim Young. On behalf of the Office of Ohio Public Defender (OPD), I speak in support of Senate Bill 101 and all efforts to abolish the death penalty in Ohio. The time has come to extinguish this inefficient, ineffective, and inhumane practice.

### **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." He called it "broken."<sup>1</sup>

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

<sup>1</sup> Marty Schladen, Ohio AG: Clear death penalty roadblocks or get rid of it, Ohio Capital Journal.

<sup>2</sup> See *the Cost of Ohio's Death Penalty*, Ohioans to Stop Execution, March 14, 2014, <http://otse.org/deathpenalty-cost/> (last accessed 10/08/2023).

<sup>3</sup> *Id.*

<sup>4</sup> OPD Capital Study 2010.

<sup>5</sup> [https://deathpenaltyinfo.org/database/sentences?jurisdiction-type=State&jurisdiction=Ohio&sentence-outcome=Conviction+Voided,+Convicted+and+Sentenced+to+Life+or+Less+in+Another+Jurisdiction&sentence-outcome=Grant+of+Relief+\(Never+Retried\)&sentence-outcome=Grant+of+Relief+\(Retrial/Resentencing+Pending\)&sentence-outcome=Grant+of+Relief+\(Subject+to+Appeal\)&sentence-outcome=No+Longer+on+Death+Row+\(Reason+Undetermined\)&sentence-outcome=Resentenced+to+Life+or+Less&sentence-outcome=Retrial+Barred](https://deathpenaltyinfo.org/database/sentences?jurisdiction-type=State&jurisdiction=Ohio&sentence-outcome=Conviction+Voided,+Convicted+and+Sentenced+to+Life+or+Less+in+Another+Jurisdiction&sentence-outcome=Grant+of+Relief+(Never+Retried)&sentence-outcome=Grant+of+Relief+(Retrial/Resentencing+Pending)&sentence-outcome=Grant+of+Relief+(Subject+to+Appeal)&sentence-outcome=No+Longer+on+Death+Row+(Reason+Undetermined)&sentence-outcome=Resentenced+to+Life+or+Less&sentence-outcome=Retrial+Barred).

<sup>6</sup> [https://deathpenaltyinfo.org/database/sentences?jurisdiction-type=State&jurisdiction=Ohio&sentence-outcome=Conviction+Voided,+Convicted+and+Sentenced+to+Life+or+Less+in+Another+Jurisdiction&sentence-outcome=Grant+of+Relief+\(Never+Retried\)&sentence-outcome=Grant+of+Relief+\(Retrial/Resentencing+Pending\)&sentence-outcome=Grant+of+Relief+\(Subject+to+Appeal\)&sentence-outcome=No+Longer+on+Death+Row+\(Reason+Undetermined\)&sentence-outcome=Resentenced+to+Life+or+Less&sentence-outcome=Retrial+Barred](https://deathpenaltyinfo.org/database/sentences?jurisdiction-type=State&jurisdiction=Ohio&sentence-outcome=Conviction+Voided,+Convicted+and+Sentenced+to+Life+or+Less+in+Another+Jurisdiction&sentence-outcome=Grant+of+Relief+(Never+Retried)&sentence-outcome=Grant+of+Relief+(Retrial/Resentencing+Pending)&sentence-outcome=Grant+of+Relief+(Subject+to+Appeal)&sentence-outcome=No+Longer+on+Death+Row+(Reason+Undetermined)&sentence-outcome=Resentenced+to+Life+or+Less&sentence-outcome=Retrial+Barred).

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You have to wonder, if we asked Ohioans if they would rather spend these millions and millions of dollars to pursue death sentences, with these kinds of failure rates, that probably will not end in execution, or spend those millions on roads and education, what would Ohioans choose? 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, we might actually prevent some of these crimes. Additionally, Ohio could invest these millions of dollars in real, impactful services to crime victims, 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>7</sup> The death penalty is not a deterrent.<sup>8</sup> From 1981 – 2022, Ohio sentenced 336 people to death.<sup>9</sup> However, due to a number of reasons, just one in every six of those sentences has been executed.<sup>10</sup> As of the end of 2022, 21 individuals have had their sentence commuted; 38 individuals have died of natural causes or committed suicide; nine individuals were found to have an intellectual disability and were not eligible for the death penalty under the constitution and three 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>11</sup>

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

If the State of Ohio is going to kill individuals as a means of demonstrating 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 be exonerated.<sup>12</sup> That

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<sup>7</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 10/08/2023).

<sup>8</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 10/08/2023).

<sup>9</sup> Office of the Ohio Attorney General's 2022 Capital Crimes Annual Report, pg. 3, <https://www.ohioattorneygeneral.gov/Files/Reports/Capital-Crimes-Annual-Reports/2022CapitalCrimesAnnualReport> (last accessed 10/08/2023).

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

<sup>11</sup> *Id.*

<sup>12</sup> <https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/ohio> (last accessed 10/08/2023); <https://deathpenaltyinfo.org/database/innocence?state=Ohio> (last accessed 10/08/2023).



means for every 5 individuals Ohio has executed since 1976, we've had one individual that was on death row be exonerated. 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 being a State that metes out justice. 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? 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.

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>13</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>14</sup> 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>15</sup>

### **Conclusion**

According to the Ohio Attorney General, the cost of imposing the death penalty on the 118 inmates currently on death row ranges from \$128 million to \$384 million.<sup>16</sup> Add to this the millions wasted on each and every trial. Ohioans have far more important priorities than seeking a penalty that is ineffective, wasteful, and with 40 years of evidence showing no amount of

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<sup>13</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 10/08/2023).

<sup>14</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 10/08/2023).

<sup>15</sup> <https://www.wcpo.com/news/opinion/ohios-former-prisons-chief-the-death-penalty-isnt-worth-fixing-> (last accessed 10/08/2023); [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 10/08/2023).

<sup>16</sup> The 2022 Capital Crimes Annual Report is available online at: <https://www.ohioattorneygeneral.gov/Media/News-Releases/March-2023/AG-Yost-Urges-Ohio-Elected-Officials-to-Address-Fl>; See Current Ohio Death Row Roster at <https://drc.ohio.gov/about/capital-punishment/death-row> (last accessed on 11/14/2023).



legislative change, procedural safeguards, or government tinkering will ever be successful in solving these fundamental failures. The Attorney General concludes: “This system [capital punishment] is a testament to government impotence.”<sup>17</sup> As stated, we concur and reiterate that this is the most wasteful government program in existence in Ohio.

Ohio can be a State that upholds the tenets of justice far better by moving beyond our broken capital punishment system and imposing life without parole. Thank you for the opportunity to testify. I welcome your questions.

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<sup>17</sup> *Id.*

