

The Appeal of Repeal:

Why Ohioans Are Ready and Motivated to End Capital Punishment



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On March 2, 2021, state senators Stephen Huffman (R-Tipp City) and Nickie J. Antonio (D-Lakewood) introduced Senate Bill 103, a bipartisan bill to repeal Ohio's death penalty. Two days later, companion legislation came in the other chamber via House Bill 183, introduced by Jean Schmidt (R-Loveland) and Adam Miller (D-Columbus). Should either bill pass, Ohio would become the 24th state to abolish capital punishment.

"Ohio is a pro-life, fiscally responsible state and the death penalty does not match its values anymore. And I think you're starting to see that."

-Michael Hartley, President, Swing State Strategies^{xiii}

This legislation comes on the heels of public opinion polling, conducted by The Tarrance Group, demonstrating statewide, bipartisan support for ending capital punishment at 59%. Both a majority of surveyed Democrats (69%) and a majority of surveyed Republicans (53%) support repealing the death penalty. In recent months, Ohio's elected officials have also taken a stand on the controversial policy, with Governor DeWine announcing a "de facto moratorium" on executions in early December 2020,ⁱ and the State legislature passing a bill that bars the use of the death penalty for individuals with severe mental illness later that month.

Just seven years ago public opinion polling on the death penalty told a different story. Two Quinnipiac University polls conducted in 2014 showed that nearly 70% of Ohioans supported capital punishment.ⁱⁱ Now, looking at current public opinion data, "the numbers represent a big swing in Ohio attitudes toward the death penalty," wrote Ohio Capital Journal's Marty Schladen.ⁱⁱⁱ

The evidence is clear: Ohioans are backing away from capital punishment. Regardless of one's political affiliation, there are varied and diverse interests that can fuel such opposition. This report outlines a few reasons why Ohioans are taking a stand against the death penalty.

Justice and the Arbitrary Application of the Death Penalty

Throughout its history, Ohio’s use of the death penalty has waxed and waned. In 1978, the U.S. Supreme Court even invalidated Ohio’s death penalty statute in the case *Lockett v. Ohio*. This decision came in the aftermath of the landmark U.S. Supreme Court case *Furman v. Georgia*, which struck down capital punishment nationwide for a short time starting in 1972. At the core of the rationale in the *Furman* decision was the apparent arbitrariness of which cases had the death penalty imposed. Particularly prominent was a concern that racial bias against Black defendants in capital cases was leading to an uneven application of the law. In his opinion, Justice Potter Stewart wrote: “These death sentences are cruel and

unusual in the same way that being struck by lightning is cruel and unusual.”^{iv}

Since Ohio reinstated the death penalty in 1981, factors such as race, county of conviction, and resources have played a role in who is capitally indicted and sentenced to death. The disparities based on the race of a defendant’s victim are particularly stark: defendants with white victims make up a disproportionate number of those on death row, as well as those executed in the state.^v

The fact that arbitrary factors impact the imposition of capital punishment—whether one lives or dies for crimes committed—has prompted people to question whether the death penalty can be administered fairly. In a collaborative editorial published on March 9, 2021 by *The Columbus Dispatch*, former Governor Bob Taft and former Attorneys General Jim Petro and Lee Fisher wrote:

“We have learned the death penalty is not applied fairly, that race and place play an intolerable role in deciding who lives and who dies. People of color make up just 15% of Ohio’s population, but 56% of our death row. An African American killing a white victim is 3 to 4 times more likely to receive the death sentence, and 75% of Ohio’s executions thus far followed a crime involving a white victim. Place, too, matters: geographic disparities abound with death sentence-seeking largely dependent on the personal predilections of individual prosecutors.”

-Former Ohio Governor Bob Taft, and former Attorneys General Jim Petro and Lee Fisher

	WHITE VICTIM ^{vi}	BLACK VICTIM ^{vii}	OTHER RACE VICTIM ^{viii}
Current death row prisoners	99	41	4
Former death row prisoners	137	63	10
TOTALS (%) N=354 total victims	236 (66.67%)	104 (29.38%)	14 (3.95%)

	WHITE VICTIM	BLACK VICTIM	OTHER RACE VICTIM
Executed Prisoners	44 (71%)	14 (23%)	4 (6%)

The Issue of Innocence

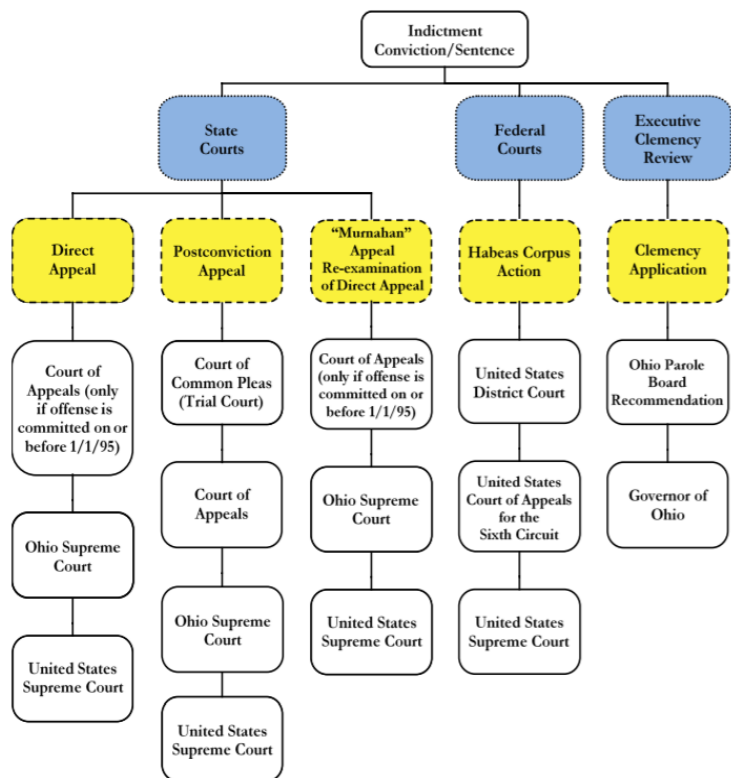
The striking number of innocent individuals who have been exonerated for the crimes that sent them to death row has only served to bolster critiques of capital punishment. During the modern era, in Ohio alone, 11 individuals have been freed after they were wrongly sentenced to death. Together, these exonerated individuals served a total of 229 years for crimes which they did not commit.^{ix}

Former Ohio Attorney Jim Petro, who supervised 18 executions from 2003-2007, said, “Thousands of people have been, and currently are, imprisoned for crimes of which they are completely innocent. This includes some on death row. It is likely America has executed people who are completely innocent of the crimes for which they were put to death. More innocent people will die as long as we use this deeply flawed system.”^x

With life on the line following a conviction, capital defendants are also entitled to a variety of appeals. While such appeals are important and necessary—particularly given the more than 180 exonerees who were wrongly sentenced to death across all states in the modern era—they are also long, costly and, again, carried out at the taxpayers’ expense. Throughout the process, defendants are incarcerated in prisons where heightened surveillance and security also proves costly.

The following from the Ohio Attorney General’s Office highlights the appellate process for Ohio’s capital defendants. With Ohio taxpayers footing the bill at every turn, capital prosecution is not in the economic interest of Ohioans.

Flowchart: Overview of Ohio’s Death Penalty Appellate Process



The Economic Toll of Capital Punishment

The excessive costs of capital punishment have also drawn criticism. The path a capital defendant takes from indictment or formal accusation to execution is lengthy. Given the complexities and procedural safeguards necessary in capital cases, pre-trial investigations tend to be more robust driving the costs higher. Same goes for the trial stage. On top of the State’s expenses for prosecuting a capital case, the vast majority of defendants are indigent and represented by county public defenders.

The Right to Take a Life

Beliefs about the sanctity of life and the question of whether the government has the right to end a life has also prompted opposition to the death penalty. In Ohio, faith leaders of different religions and denominations have been some of the loudest voices speaking out in opposition to capital punishment. Open letters, statements, and petitions from these faith leaders reveal that beliefs about the dignity and sacredness of human life drive their opposition.^{xi} Legislators, too, have let faith guide their beliefs about the fairness of capital punishment. For instance, Rep. Craig Riedel (R-Defiance) has explained: “It is my Christian faith that has led me to oppose the death penalty. My belief is that life begins at conception and should only end at natural death.”^{xii}

Notions about the right to take a life are also core to religious and political arguments against the death penalty. A religious belief that no human has the right to end a life dovetails with the idea that giving the government power over life and death represents an unacceptable overreach.

Next Steps

We touched briefly on just a few reasons why Ohioans are ready and motivated to abolish the death penalty. We recognize there are many other reasons not listed here, and [in coming months, the Ohio Justice & Policy Center will thoroughly examine the myriad issues leading Ohioans to look so unfavorably on capital punishment.](#) We will examine the history of the death penalty and issues including, but not limited to, innocence, the role of race, geography and prosecutorial discretion. We will examine the financial and human costs. We will explore the impact of the death penalty system on victims’ families, on law enforcement, and on those whose job it is to carry out the execution. Putting the death penalty system under the microscope will provide insight as to why Ohioans are so ready to move on and become a death penalty-free state.

“We believe that the sanctity of life should be protected more than anything else and when you give the government the power over life, you’re giving them the ultimate power, and we’ve seen throughout history in the U.S. and the world where giving the government that much power can have devastating effects.”

- Rep. Laura Lanese, R-Grove City^{xii}

ⁱ Ludlow, Randy. *The Columbus Dispatch*, "Ohio Gov. Mike DeWine no longer supports death penalty," December 16, 2020.

ⁱⁱ Higgs, Robert. *The Cleveland Plain Dealer*, "Poll finds Ohioans support death penalty, but results vary greatly with change of question," May 14, 2014.

ⁱⁱⁱ Schladen, Marty. *Ohio Capital Journal*, "Poll: Big majority in Ohio support getting rid of the death penalty," January 28, 2021.

^{iv} *Furman v. Georgia*, 408 U.S. 238 (1972)

^v Office of the Ohio Public Defender, "Death Row Resident Information" Last accessed March 31, 2021. Available at <https://opd.ohio.gov/wps/portal/gov/opd/law-library/death-penalty/death-row-resident-information/death-row-resident-information>

^{vi} White victim means at least one victim in the underlying crime involved a victim whose race is identified as "White" by Ohio law enforcement agencies.

^{vii} Black victim means at least one victim in the underlying crime involved a victim whose race is identified as "Black" by Ohio law enforcement agencies.

^{viii} Other race victim means at least one victim in the underlying crime involved a victim whose race is identified as "Other" by Ohio law enforcement agencies.

^{ix} Death Penalty Information Center, Innocence Database, last accessed April 1, 2021. Available at <https://deathpenaltyinfo.org/policy-issues/innocence-database>

^x Petro, Jim and Nancy. *The Cincinnati Enquirer*, "Ohio shouldn't risk executing innocent," September 19, 2014.

^{xi} Ohio Council of Churches, "2020 Policy Agenda"; Ohioans To Stop Executions, "Sign-on-Letter to Repeal Ohio's Death Penalty for Faith Leaders"; Catholic Mobilizing Network, "Catholic Ohioans: Take Action to Support Death Penalty Abolition."

^{xii} Ohioans To Stop Executions, "Death Penalty Repeal in Ohio: Why Conservatives are Leading the Charge," 2020.

^{xiii} Interview with Michael Hartley, WBNS 10TV *Face the State*, January 5, 2020.