

# **A Crumbling Institution:**

*Why Ohio Must Fix or  
End the Death Penalty*

**OHIOANS TO  
STOP EXECUTIONS**





# Introduction

Ohioans to Stop Executions (OTSE) releases *A Crumbling Institution: Why Ohio Must Fix or End the Death Penalty*, its annual report on the status of Ohio's death penalty. This report serves as a complement to the 2014 Ohio Attorney General Capital Crimes Report, published March 30, 2015. OTSE offers this report to provide context, detail, additional information and perspective beyond the statutory scope of the Capital Crimes Report.

The Capital Crimes Report is a valuable source of information. It contains vast amounts of quantitative data and pertinent sections of the Ohio Revised Code that provide the reader with information about the history, use, and legal provisions related to Ohio's death penalty.

Perspectives presented here are those of OTSE unless otherwise explicitly stated. All research done in this report has been performed and compiled by OTSE. This report was developed using information available from the following sources: Office of the Attorney General, the Ohio Supreme Court, the Ohio Supreme Court Joint Task Force to Review the Administration of the Death Penalty, the Ohio Department of Rehabilitation and Correction, the Office of the Ohio Public Defender, the Office of the Federal Public Defender, Southern Division, and the Office of the Federal Public Defender, Northern Division, the Death Penalty Information Center, and reports by the news media.

## Executive Summary

We know so much more about the death penalty now than ever before, and it is well past time for Ohio policy makers and the general public to have the discussion: The system is broken beyond repair. If there is insufficient political will to terminate the death penalty, shouldn't we fix its many problems?

Ohio Supreme Court Justice Paul Pfeifer and former Ohio Attorney General Jim Petro, two primary authors of Ohio's death penalty statute, have been calling for an end to the death penalty for several years. Dr. Reginald Wilkinson and Terry Collins, both former directors of the Ohio Department of Rehabilitation and Correction, who between them oversaw more than 40 executions, also call for an end to executions. These men and others have tried to apply the death penalty fairly but have recognized that human errors continue to plague Ohio's ultimate and irreversible punishment.

Yet, a majority of current Ohio legislators hang on to the idea that we must have the death penalty. If capital punishment is to stay on Ohio's books, then surely all Ohioans agree that it should be fairly applied and any risk of convicting and executing innocent people must be eliminated.

Last April OTSE released its inaugural yearly report, "The Death Lottery: How Race and Geography Determine Who Goes to Ohio's Death Row." The report demonstrated that 1) Ohio's overall use of the death penalty is in decline; 2) that the county where a crime occurs and the race of Ohio murder

victims are strong predictors of death sentences; and 3) that Ohio has been forced to rework its execution protocol on an annual basis. The conclusion of last year's report: *Any public policy that demonstrates such consistent unevenness in its application requires transformative changes. If fairness cannot be achieved in the application of the death penalty, the more effective and efficient criminal justice policy is repeal.*

A year later, first steps are being taken to implement recommended reforms, and it is in this context that OTSE offers this report, "A Crumbling Institution: Why Ohio Must Fix or End the Death Penalty".

The trend of decline continued in 2014. New death penalty cases remained at an all-time low since 1981. Mounting evidence also supports the idea that Ohio's death penalty system has sent more innocent men to Death Row than previously believed.

This 2014 report highlights:

- Three new Death Row exonerations
- Historically low indictments
- New death sentences are down 25%
- Fewest executions since 2000
- 2014's single execution led to an extended moratorium
- Recommendations by the Ohio Supreme Court Joint Task Force to Review the Administration of Ohio's Death Penalty
- High costs of the death penalty
- Continuing execution protocol changes
- Prominent Ohioans expressing concern

Ohio legislators and leaders now have the information necessary to accept and address the issues of fairness and accuracy raised by the Ohio Supreme Court Joint Task Force to Review the Administration of Ohio's Death Penalty, which was prompted by the American Bar Association's assessment of Ohio's system. The Task Force provided the language, data and public policy rationale necessary to take steps to fix the most egregious problems.

The title of this year's report, "A Crumbling Institution: Why Ohio Must Fix or End the Death Penalty" offers a lens through which it becomes clear that Ohio's system continues to fail as a legitimate and responsible public policy. This report highlights Ohio's long-standing problems with fairness and accuracy in its death penalty system and where experts agree that meaningful improvements can be made.

## Exonerations

The Death Penalty Information Center, the nation's leading source of information concerning the death penalty, uses a three-part test to determine whether an offender had been exonerated: a defendant must have been convicted, sentenced to death and subsequently either:

- a. Been acquitted of all charges related to the crime that placed him on Death Row, or;
- b. Had all charges related to the crime that placed him on Death Row dismissed by the prosecution, or;
- c. Been granted a pardon based on evidence of innocence.

The nine men exonerated from Ohio's Death Row spent a combined 207 years incarcerated for crimes they did not commit.<sup>1</sup> On average, men exonerated from Ohio Death Row spent over 21 years wrongfully imprisoned.

## **NEW IN 2014**

### **Ricky Jackson, Kwame Ajamu, and Wiley Bridgeman**



Ricky, Wiley, and Kwame (then known as Ronnie Bridgeman) were sentenced to death for the 1975 murder of Harold Franks outside a convenience store in Cleveland. The state's case rested on the witness testimony of a 12-year old who identified the three men as the perpetrators of the crime. In 2014, the witness recanted his testimony and admitted to being

pressured by investigators to make the false identification. In an affidavit submitted by the witness decades later, he explained that detectives threatened to arrest his parents for perjury if he didn't cooperate.<sup>2</sup>

Jackson, Ajamu and Bridgeman spent a combined total of nearly 105 years in prison<sup>3</sup> and had impending execution dates that were fortuitously stopped when the U.S. Supreme Court ruled Ohio's death penalty unconstitutional in 1978. Nevertheless, they continued to serve time for decades more under a life sentence before the truth finally came to light.

## **SINCE 1976<sup>4</sup>**

### **Joe D'Ambrosio (Exonerated in 2012)**



Joe D'Ambrosio was sentenced to death in 1989 for murder of Anthony Klann. The federal district court overturned his conviction because the state had withheld evidence from the defense that pointed to his innocence. The court then barred his re-conviction trial due to further prosecutorial misconduct. D'Ambrosio's charges were dismissed in 2012, twenty-three years after he was sentenced to Death Row.

### **Derrick Jamison (Exonerated in 2005)**



Derrick Jamison was sentenced to death in 1985 for the murder of a Cincinnati bartender. Prosecutors withheld critical evidence that would have pointed to Jamison's innocence, including eyewitness descriptions and statements that contradicted the story told by Jamison's co-defendant. Jamison's charges were dismissed in 2005, twenty years after he was sent to Death Row.

### Timothy Howard and Gary Lamar James (Exonerated in 2003)



Timothy Howard and Gary Lamar James were convicted of a murder during the course of a bank robbery in 1976. They were released after new evidence was uncovered that had not been disclosed at the time of their trials, including conflicting witness statements and fingerprints. Their charges were dismissed in 2003.

### Dale Johnston (Exonerated in 1990)



Dale Johnston was sentenced to death in 1984 for the murders of his stepdaughter and her boyfriend. After undergoing hypnosis, a sole eyewitness identified Johnston as the killer. The only other primary witness provided boot print evidence that was later discredited. The authorities knew of four other eyewitnesses with a completely different story of the crime, but they never disclosed them to the defense. Johnston was released in 1990.

### Gary Beeman (Exonerated in 1979)



Gary Beeman was sentenced to death in 1976. His conviction was based on the perjured testimony of a prison escapee that Beeman's lawyers were prevented from fully cross-examining. At his retrial, five witnesses testified that this star witness was, in fact, the killer and that Beeman was not involved. He was acquitted in 1979.

## 2014 Capital Indictments (21)<sup>5</sup>

The number of new death penalty cases initiated by Ohio prosecutors in 2014 was 21,<sup>6</sup> the same number in 2013. Since Ohio's current death penalty law was enacted, only 1981 had fewer capital indictments (14) than were filed in 2014.<sup>7</sup>

Paulding County filed its first capital indictment under the current death penalty statute. Investigators arrested and charged a 58-year old Defiance man for the 1981 cold case murder of Alma Noffsinger. Stephen Noffsinger was arrested in August 2014 shortly before a television program that had covered the case was set for release. Articles note the program, TNT's crime show *Cold Justice*, assisted in building a circumstantial case against Noffsinger.<sup>8</sup>

Prosecutors sought a dismissal of the death penalty case against Noffsinger in October 2014.<sup>9</sup> There was no explanation offered for the dismissal. The charges against Noffsinger are still pending, however, the death penalty cannot be imposed. The trial for Mr. Noffsinger is set for April 2015.<sup>10</sup>

One new trend has emerged in 2014. For the first time since Ohio's 1981 death penalty law was enacted, the majority of new death penalty cases came from counties other than the ten highest indicting counties.<sup>11</sup> Of the 21 capital indictments filed in 2014, 12 came from counties with the fewest numbers of death penalty cases historically.<sup>12</sup> To understand this trend, a few factors must

be considered. First, this could be an anomaly. Second, it could be as a result of changes in prosecutors. Third, it is possible a violent crime wave has erupted in smaller Ohio counties (Allen, Ashtabula, Champaign, Crawford, Erie, Gallia, Guernsey, Lorain, Medina, Paulding, Portage, Warren and Wayne). Another possibility is that Ohio prosecutors are reacting to criticisms regarding geographic disparity in the application of the death penalty.

With respect to changes in prosecutors, five of the 13 lower indicting counties have new prosecutors (Ashtabula, Champaign, Crawford, Warren and Wayne Counties). Two counties distinguish themselves in this grouping: Ashtabula and Warren. Both counties filed three capital indictments in 2014.<sup>13</sup> The only Ohio county filing as many new death penalty cases in 2014 was Summit County with three. The arrival of new prosecutors in these two counties may play a role in the increasing number of indictments coming from jurisdictions that historically have been less inclined to seek the death penalty. Looking back over years of data collected by the Ohio Supreme Court, neither Ashtabula nor Warren ever filed as many capital indictments.<sup>14</sup> Since 1981, Ashtabula County has initiated a total of 20 death penalty cases (three in 2014) and Warren County has initiated 17 death penalty cases (three in 2014).<sup>15</sup> The Ashtabula County death penalty cases are being tried by the Attorney General's office rather than the Ashtabula County prosecutor,<sup>16</sup> which is unusual but generally happens when a county doesn't have the resources to prosecute a death penalty case.

Whether counties historically less inclined to seek the death penalty are seeing more violent crime, which leads to more death penalty cases is difficult to know. Data will not be available from FBI Uniform Crime Reports until 2016 or later. In addition, there are a multitude of variations and factors county prosecutors take into account when deciding to initiate a death penalty case or not. These factors are subjective and continue to enable a significant sense of arbitrariness to Ohio's death lottery system. At this point, any correlation between violent crime and increased use of the death penalty is unknown.

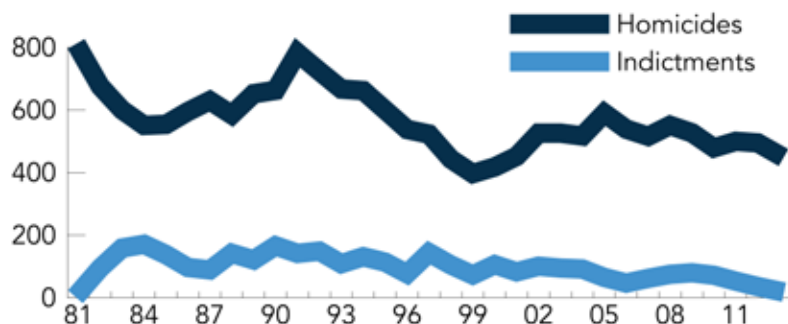
Another possibility is that county prosecutors are reacting to well known, established patterns of uneven application of the death penalty. A prime example of this is the fact that the Attorney General's office, not the Ashtabula prosecutor, is prosecuting the two unresolved death penalty cases underway in that county. One has to question whether prosecutors are initiating death penalty

County	Capital Indictments*		
	2012	2013	2014
Allen	0	1	1
Ashtabula	0	0	3
Belmont	2	0	0
Butler	0	0	2
Champaign	0	0	1
Crawford	0	0	1
Cuyahoga	11	4	1
Erie	4	0	1
Franklin	0	0	1
Gallia	2	0	0
Geagua	1	0	0
Guernsey	0	0	1
Hamilton	3	1	1
Lorain	0	0	1
Mahoning	1	2	1
Medina	0	0	1
Mercer	0	1	0
Montgomery	1	1	0
Muskingum	3	0	0
Ottawa	0	1	0
Paulding	0	0	1
Portage	3	0	1
Richland	0	1	0
Shelby	0	2	0
Stark	1	1	1
Summit	3	7	3
Trumbull	0	0	1
Warren	0	0	3
Wayne	0	0	1

*\*There is a discrepancy in the numbers of capital indictments. Ohio Supreme Court records indicate 28 notifications of death penalty cases by county prosecutors, though some notifications were for cases originating in 2012 and 2013. In 2014, there were only 21 new capital indictments.*

## Murder Rate and Capital Indictment Comparison

Do capital indictments track homicides across Ohio? While both have decreased over time, there is no clear correlation between the two. Sometimes, as it was between 1990-1993, Ohio's counties watch their indictments fall while homicides rise.



cases in smaller, rural counties because of scrutiny about uneven county application. The most likely conclusion is that if not for the Attorney General's office having the resources and personnel to try these two simultaneous capital trials, it is doubtful Ashtabula County would prosecute these cases seeking the death penalty.

Another example is the Crawford County case of Donald Hoffman where the defendant entered into a plea deal after being charged with death penalty specifications.

The plea deal, according to media

reports by the Associated Press, restricts potential appeals and could provide some closure for the victims' families.<sup>17</sup> Crawford County prosecutor Matthew Crall said Ohio's moratorium on executions and other concerns related to the status of the death penalty in the state factored into discussions about Hoffman, who wanted to plead from the outset.<sup>18</sup>

Time will tell how many of the 2014 capital indictments result in a death sentence. Three cases were resolved in 2014 with new death sentences (David Martin of Trumbull County originated in 2012 and Willie Wilks of Mahoning County originated in 2013), 13 were or will be resolved with sentences other than death (4 originated before 2014) while 12 capital trials were pending (1 pending originated in 2013). One person, Donna Roberts, Ohio's only woman on Death Row, was resentenced to death after previously being sentenced to death in 2007.

## Capital Indictments Since 1981, By County

County	Number of Indictments Since 1981	Contributed x% of total capital indictments since 1981
Cuyahoga	1278	39.63%
Franklin	500	15.74%
Hamilton	173	5.57%
Lucas	133	4.15%
Summit	117	3.36%
Mahoning	103	3.20%
Stark	80	2.44%
Trumbull	62	1.84%
Clark	56	1.77%
Butler	50	1.58%
Remaining 78 Counties	654	20.72%
<b>Total Indictments</b>	<b>3157</b>	<b>100%</b>



# New Death Sentences in 2014

A total of three new death sentences were handed down in 2014,<sup>19</sup> down 25% compared to 2013. Donna Roberts, who was resentenced to death once before in 2007<sup>20</sup> and now again in 2014, was originally convicted and sentenced to death in 2003 for the murder of her ex-husband Robert Fingerhut. Ms. Roberts' conviction was overturned, in part, due to concerns with inadequate mitigation regarding her mental illness during her initial trial.<sup>21</sup>

The death penalty cases of Willie Wilks and David Martin originated in 2013 and did not conclude until 2014. Wilks was convicted of murdering 20-year old Ororo Wilkins in Youngstown in 2013. David Martin was convicted of killing Jeremy Cole, 21, in 2012 in Trumbull County. Mr. Martin's death sentence was the first issued in 11 years from a Trumbull County jury.<sup>22</sup>

Austin Myers, 19, of Warren County was sentenced to death on October 16, 2014. Myers and his co-defendant Timothy Mosley murdered 18-year old Justin Back in January 2014. Mosley was given a plea deal in exchange for his testimony against Austin Myers. Warren County Prosecutor David Fornshell remarked that the prosecutors would not have been able to sentence the teenager to death without the testimony of his co-defendant.<sup>23</sup> Mosley was offered life without parole in exchange for his testimony.

## Details on New Death Sentences\* in 2014

Inmate Name	County	Race	Date Sentenced	Name(s) and Age(s) of Victim(s), if known	Race of Victim(s)
Donna Roberts*	Trumbull	W	10/29/07; Resentenced 4/30/14	Robert Fingerhut, 57	W
Willie Wilks	Mahoning	B	5/7/2014	Ororo Wilkins, 20	B
David Martin	Trumbull	B	9/24/2024	Jeremy Cole, 21	W
Austin Myers	Warren	W	10/16/2014	Justin Back, 18	W

*\*Donna Roberts was re-sentenced in 2007 and again in 2014 after the initial capital conviction in 2003.*

# Executions Scheduled for 2014

Six executions were scheduled for 2014,<sup>24</sup> the same number that had been scheduled for 2013. However, only one execution was carried out in 2014 compared to three in 2013. Dennis McGuire's January 2014 execution threw Ohio into the national spotlight and led to the longest period without executions since Ohio resumed executions in 1999.<sup>25</sup>



## EXECUTED

### Dennis McGuire

Dennis McGuire was executed on January 16, 2014 with an untried, untested and experimental lethal injection drug cocktail of midazolam and hydromorphone. He was put to death for the 1989 rape and murder of Joy Stewart, a 22-year old pregnant woman in Preble County. The execution, which took place at the Southern Ohio Correctional Facility in Lucasville was one of the longest executions on record since Ohio reinstated its modern death penalty system.<sup>26</sup> Observers from the media and others who witnessed the execution described it as being botched. McGuire was observed as gasping, snorting, and snoring for the more than 26 minutes it took the drug cocktail to kill him.<sup>27</sup>

The execution of Dennis McGuire was a catalyst for a moratorium on executions in Ohio issued by a U.S. District Court judge. The botched procedure became a central component of the national narrative that one botched execution after another was taking place in 2014; executions also went terribly awry in Oklahoma and Arizona. The US Supreme Court will hear arguments regarding Oklahoma's execution drug protocol in 2015.

The Ohio Department of Rehabilitation and Correction chose the experimental execution method despite concerns raised by anesthesiologists and their colleagues in the medical community.<sup>28</sup> The state's medical expert, an anesthesiologist who regularly testifies for states conducting executions, Dr. Mark Dershwitz, announced he would no longer provide assistance and advice to departments of corrections for fear of jeopardizing his standing with the American Board of Anesthesiology.<sup>29</sup> According to court documents, Dr. Dershwitz's opinion was that there would be no issues conducting Ohio's experimental execution in January.<sup>30</sup> The aftermath of the McGuire execution shows this execution was anything but ordinary.

## CLEMENCY/COMMUTATION

### Arthur Tyler

Arthur Tyler had been scheduled to be executed on May 28, 2014 for the 1983 murder of produce vendor Sander Leach in Cuyahoga County. The Ohio Parole Board unanimously

2014 Focus On Butler County	
Indictments since 1981	50
Indictments that resulted in a death sentence	10 (20%)
Offenders (White)	50%
Offenders (Black)	40%
Offenders (Other)	10%
Victims (White)	76.47%
Victims (Black)	23.53%
Victims (Other)	0%
Post-Death Penalty Conviction Relief	3 (30%)
% of Indictments with outcome other than death penalty	80%
Executions	1
Men on Death Row	7

2014 Focus On Cuyahoga County	
Indictments since 1981	1278
Indictments that resulted in a death sentence	63 (4.93%)
Offenders (White)	36.51%
Offenders (Black)	58.73%
Offenders (Other)	4.76%
Victims (White)	40.66%
Victims (Black)	53.85%
Victims (Other)	5.49%
Left Death Row, Not By Execution	58.73%
% of Indictments with outcome other than death penalty	95.07%
Executions	9
Men on Death Row	17

recommended commutation with parole eligibility due to serious flaws in the trial that convicted him in the 1980s and doubt Tyler's role in the murder.<sup>31</sup> No other person ever received a unanimous recommendation for parole eligibility while under a sentence of death.<sup>32</sup> Governor John Kasich commuted Tyler's sentence but did not release him. Arthur Tyler's clemency hearing and decision was unusual in that the Cuyahoga County Prosecutor also asked the Parole Board and Governor Kasich for a commutation.<sup>33</sup>

Arthur Tyler maintains his innocence in the shooting of Sander Leach and plans to continue fighting for freedom.<sup>34</sup>

## REPRIEVES/RESCHEDULED

The federal court-ordered moratorium in 2014, as well as a self-imposed postponement of executions announced by the Ohio Department of Rehabilitation and Correction resulted in the rescheduling of numerous Ohio Death Row inmates' execution dates. In addition to Dennis McGuire, there had been five other executions scheduled for 2014. These executions were rescheduled for 2015, then later pushed back to 2016 and 2017:<sup>35</sup>

1. Gregory Lott, Cuyahoga County, Scheduled 03/19/14
2. Arthur Tyler, Cuyahoga County, Scheduled 05/28/14
3. Ronald Phillips, Summit County, Scheduled 07/2/14
4. William Montgomery, Lucas County, Scheduled 08/06/14
5. Raymond Tibbetts, Hamilton County, Scheduled 10/15/14

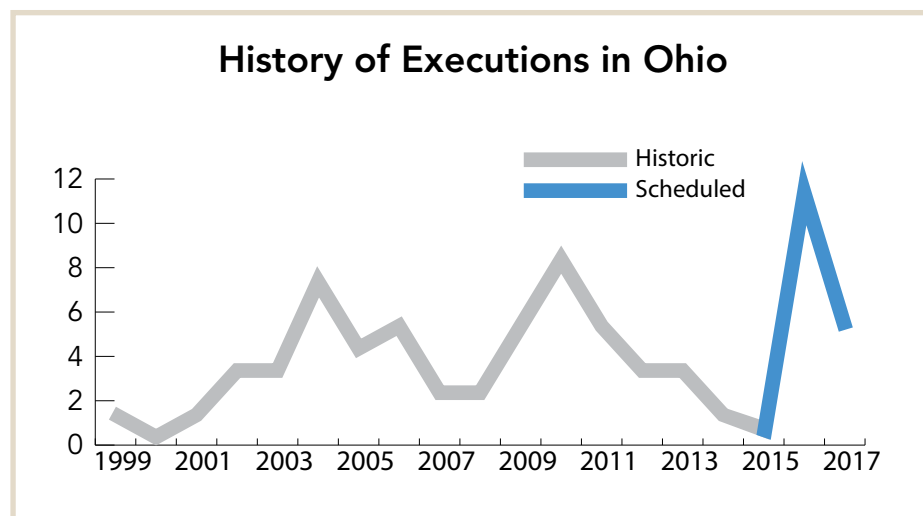
*NOTE: The complete, thrice-revised execution schedule is as follows:<sup>36</sup>*

Name	County	Scheduled Execution
Ronald R. Phillips	Summit County	January 21, 2016
Raymond Tibbetts	Hamilton County	February 19, 2016
Alva Campbell, Jr.	Franklin County	March 26, 2016
Gregory Lott	Cuyahoga County	April 20, 2016
Angelo Fears	Hamilton County	May 18, 2016
Warren K. Henness	Franklin County	June 22, 2016
Cleveland R. Jackson	Allen County	July 20, 2016
William Montgomery	Lucas County	August 15, 2016
Kareem M. Jackson	Franklin County	September 21, 2016
Robert Van Hook	Hamilton County	October 19, 2016
Jeffrey A. Wogenstahl	Hamilton County	November 16, 2016
James Galen Hanna	Lucas County	January 12, 2017
Jeremiah Jackson	Cuyahoga County	March 22, 2017

Focus On Summit County	
Indictments since 1981	117
Indictments that resulted in a death sentence	20 (17.1%)
Offenders (White)	36.84%
Offenders (Black)	63.15%
Offenders (Other)	0%
Victims (White)	60%
Victims (Black)	40%
Victims (Other)	0%
Post-Death Penalty Conviction Relief	5 (25%)
% of Indictments with outcome other than death penalty	82.9%
Natural death, prior to execution	1
Executions	6
Men on Death Row	7

Name	County	Scheduled Execution
Ashford Thompson	Summit County	April 5, 2017
Donald Ketterer	Butler County	May 17, 2017
Mark Pickens	Hamilton County	July 19, 2017

If the State of Ohio follows its proposed execution schedule, it will put 11 men to death in 2016. This will be the highest number of executions in a single year by the state not only in the 21st century, but since 1949 when 15 men were executed.<sup>37</sup>



## Key Events in 2014

Besides the botched execution of Dennis McGuire in January and subsequent moratorium on executions, three noteworthy developments garnered the attention of the media, the public and Ohio legislators. First, 56 recommendations for reforms to Ohio's capital punishment system were made in April 2014 by the Ohio Supreme Court Joint Task Force to Review the Administration of Ohio's Death Penalty. Second, WHIO-TV in Dayton and the Dayton Daily News investigated some of the costs of Ohio's death penalty system. And third, the Ohio Department of Rehabilitation and Correction made additional changes to execution protocols in the final days of 2014.

### ***56 Recommendations, many designed to prevent wrongful convictions***

In 2007, Ohio was assessed as falling short in 93% of the guidelines set forth by the American Bar Association (ABA) to ensure fairness and accuracy in capital cases.<sup>38</sup> The ABA's review found Ohio's system of capital punishment to be riddled with significant geographic and racial bias that resulted in an inconsistent and unfair administration of the state's ultimate punishment.<sup>39</sup> In response, Ohio Supreme Court Chief Justice Maureen O'Connor established a task force that would closely examine





“ In making their recommendations, the Supreme Court Task Force has recognized that there are serious and systemic flaws in the handling of capital punishment cases in Ohio. ”

Edna Brown,  
Ohio Senator (D-Toledo)

the ABA's report and make actionable recommendations to address its criticisms.<sup>40</sup>

The newly created Joint Task Force to Review the Administration of Ohio's Death Penalty was comprised of judges, prosecutors, defense attorneys and academics (see all the participants in Table 3 of the Appendix). Many of the judges who participated had served as prosecutors prior to their current appointments and leveraged their years of experience to craft realistic and meaningful recommendations. This group of diverse experts met and discussed the many problems presented in the ABA report. After two years of review, the Task Force concluded its work and published its findings in April 2014 (see the full list of recommendations in Table 2 of the Appendix).<sup>41</sup>

The Task Force's final report contains 56 recommendations to improve the fairness of Ohio's death penalty system. Many of the recommendations passed with either unanimous or overwhelming support. A little over half (32) of the recommendations require rules changes made at the Supreme Court for adoption. Judges who were on the Task Force have already begun coordinating the implementation of these recommendations. The remaining 24 recommendations must be implemented through legislation. As soon as the Task Force's final report and recommendations were published, several Ohio Representatives and Senators supported their review and implementation. A few notable legislators are taking the lead when it comes to ensuring that each recommendation receives a fair hearing and passage through the Ohio Senate and House.

Four of the recommendations have already been implemented at the time of this report's publishing. All four were included in the passage of Sub. H.B. 663 in December of 2014, a sign that legislators are receptive and willing to engage in a thoughtful process of reform.



“ We better get down to business and introduce several bills that will allow all of these questions to be vetted as fully as they were in the two years of service on the Death Penalty Task Force. ”

Bill Seitz,  
Ohio Senator (R-Cincinnati)

## Key Recommendations

All 56 recommendations that were issued by the Task Force deserve serious consideration and implementation by Ohio's legislators and courts. However, OTSE has made a careful analysis to identify those recommendations that require urgent action because of their potential for ensuring fairness and accuracy as long as Ohio continues to use the death penalty.

## ***Recommendations to prevent wrongful convictions***

Thirteen of the 56 recommendations made by the Supreme Court Joint Task Force on the Administration of Ohio's Death Penalty, when implemented, will help prevent future wrongful convictions. These include recommendations such as videotaping confessions, certifying crime labs, requiring unimpeachable evidence linking a defendant to a murder, disallowing jailhouse snitch testimony, requiring prosecutors to turn over evidence which may prove innocence, and more. It's troubling that such simple requirements are not already enshrined in Ohio's criminal code.

The thirteen recommendations which will help reduce wrongful convictions are:

Recommendation	Committee	Task Force Vote
1. Any in-custody interrogation shall be electronically recorded, or if not, statements are presumed involuntary.	Law Enforcement	13-5
2. Require that each coroner's office become accredited or have at least one person on staff or under contract who is a fellow of that organization, or have a contract with an accredited crime lab to perform specialized services when the need arises.	Law Enforcement	18-1
3. In a death-eligible case, excepting fingerprint evidence, if evidence is not originally reviewed by an accredited lab, the defense has a right to testing in an accredited lab at state expense, and no reference will be made to the first test (except to establish the evidence has been in the custody of the state). If testing of evidence prior to indictment will likely entail total consumption or destruction of evidence, the test must be performed in an accredited lab; and if it is to be tested after indictment, notice must first be given to all parties. If this requirement is not followed, the evidence is presumptively inadmissible unless good cause is shown to the trial court. On the request of the prosecution in a death penalty case, defense forensic experts shall also be required to rely on testing by accredited labs.	Law Enforcement Identifications and Interrogations	17-2
4. All crime labs in Ohio must be certified by a recognized agency defined by the Ohio legislature.	Law Enforcement	10-6
11. Adopt the 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (and train counsel and judges on these).	Defense Services	12-2
13. Enact and fund a capital litigation fund to pay for all costs, fees, and expenses.	Defense Services	19-0
14. Increase funding to the Office of the Ohio Public Defender to allow for additional hiring and training of qualified capital case attorneys who could be made available to all Ohio counties, except in circumstances where a conflict of interest arises.	Defense Services	20-0
15. Implement and fund a statewide public defender system for representation in all levels of capital cases except when a conflict of interest arises, when Rule 20 qualified counsel shall be appointed.	Defense Services	13-3
17. Enact legislation that Death can only be imposed if the state presented DNA, video, video-taped confession, or other compelling evidence that links the defendant to the murder.	Defense Services	12-6
18. Bar a death sentence where the state relies solely on jailhouse informant testimony that is not independently corroborated at the guilt/innocence phase.	Defense Services	19-0
34. To address cross jurisdictional and racial discrepancy, creation of a Death Penalty Charging Committee at the Attorney General's Office to approve or disapprove of charges.	Race & Ethnicity	8-6
37. Enact a court rule that mandates, for both the prosecution and defense, full and complete access in capital cases to evidence known to exist or with due diligence could be found to exist, with an opportunity to test such evidence – excluding work product, material protected under Rule 16, or inculpatory or privileged material.	Defense Services	17-0
38. Require the prosecutor to present to the grand jury available exculpatory evidence of which the prosecutor is aware.	Defense Services	10-9

## **Recommendation 8 & 9 re: serious mental illness**

The U.S. Supreme Court has ruled in two separate cases that it is cruel and unusual to sentence individuals with mental retardation and those under the age of 18 to the death penalty.<sup>42</sup> The reason given for these decisions was that these individuals do not have the same level of judgment, understanding or self-control as do others who commit murder. While the Supreme Court has not ruled on whether certain individuals with serious mental illness fall into the same category, it is undeniable that those who commit violent crimes while in the grip of a psychotic delusion, hallucination or other disabling psychological condition lack judgment, understanding or self-control.

Ohio law greatly limits the insanity test, and also forecloses expert testimony at trial about the mental illness or organic brain damage of a defendant if the insanity test is not met.<sup>43</sup> Juries may never learn of the mental illness at the time they are considering whether the defendant is guilty of the aggravated murder or specifications, or be aware of such information when deciding whether the defendant “purposely” or “with prior calculation and design” killed another.<sup>44</sup>

Some Death Row inmates who did not have a mental illness at the time of conviction develop one as a result of prolonged confinement. Those awaiting execution after years in confinement and struggling with severe mental illness may have lost the capacity to understand why they are being put to death.

Under Ohio’s 1974 death penalty law, struck down in 1978,<sup>45</sup> death was foreclosed if the defendant suffered from such a mental illness that precluded the substantial capacity to know right from wrong or to conform one’s conduct to the law.<sup>46</sup> Excluding the mentally ill from the possibility of execution would be a return to the way Ohio’s law had been years ago.

The Ohio Supreme Court Task Force made the following recommendations concerning serious mental illness:

Recommendation	Committee	Task Force Vote
8. Enact legislation to exclude from eligibility from the death penalty defendants who suffer from “serious mental illness,” at the time of execution.	Defense Services	12-7
9. Enact legislation to consider and exclude from eligibility for the death penalty defendants who suffer from “serious mental illness,” as defined by the legislature, at the time of the crime.	Defense Services	15-2

2014 Focus On Hamilton County	
Indictments since 1981	173
Indictments that resulted in a death sentence	61 (35.3%)
Offenders (White)	36.67%
Offenders (Black)	60%
Offenders (Other)	3.33%
Victims (White)	56.25%
Victims (Black)	42.5%
Victims (Other)	1.25%
Left Death Row, Not By Execution	36.06%
% of Indictments with outcome other than death penalty	64.7%
Executions	10
Men on Death Row	28

## **Recommendations 29, 30, 31, 32, 33, 34, 35 and 36 re: race disparity and geographic bias**

Race disparity and geographic bias in death penalty outcomes have been examined time and



time again. *"The Death Lottery: How Race and Geography Determine Who Goes to Ohio's Death Row (2014)"* evidences that there are different outcomes in death penalty cases based on the race of the victim. The report noted that nearly 70% of all Death Row inmates had murdered white victims, while 66 percent of homicide victims in Ohio are people of color.

*The Death Lottery* also notes the bulk of death penalty cases come from just a handful of Ohio counties (Cuyahoga, Franklin, Hamilton, Lucas, Summit, Mahoning, Stark, Trumbull, Clark and Butler).

The Task Force made two important recommendations that address issues related to race disparity and geographic bias: narrow the felony murder rule (by vote of 12-2) and establish an oversight charging committee with the Attorney General's office (by vote of 8-6).

### *Narrowing felony-murder specifications*

Conviction rates (the percent of trials seeking a death sentence that result in one) for felony murder specifications are very low. "When you look at murder and connect the death penalty with the...specification that exists, first and foremost, the conviction rates in felony murder realm are about 2%," notes Ohio Public Defender Timothy Young.<sup>47</sup> The data<sup>48</sup> show five specifications are either typically dismissed or they are seldom sought and no longer viewed as appropriate for the death penalty.<sup>49</sup> Dennis Watkins, Trumbull County Prosecutor and then-Task Force member noted, "we [prosecutors] don't even go after these kinds of cases anymore in my county--they're not the worst of the worst," during a 2013 Task Force meeting in Columbus.

The rationale held by the majority of Task Force members was that by narrowing the felony murder rule, Ohio could address areas of concern where racial bias creeps into the capital system. Furthermore, this recommendation was one of very few made that relied exclusively on data to demonstrate where the problems exist. Criminal justice reformers recognize the best reforms Ohio can make are those which lead to better public policy decisions that are data-driven. This recommendation is the single best example of how making decisions based on empirical data leads to better public policy.

### *Oversight Charging Committee*

The rationale made for establishing an oversight committee is to allow local politics and pressures associated with high profile murders to be taken out of consideration. Most judges on the task force agreed with the idea and the notion of the oversight panel but were unsure if it raised separation of powers issues within the established system of governing. Proponents of the recommendation correctly pointed out the proposed oversight panel is how the federal government decides whether to try a case with the death penalty.

The oversight charging committee, if incorporated, would be a statewide committee made up of

2014 Focus On Franklin County	
Indictments since 1981	500
Indictments that resulted in a death sentence	20 (4%)
Offenders (White)	60%
Offenders (Black)	40%
Offenders (Other)	0%
Victims (White)	67.74%
Victims (Black)	32.26%
Victims (Other)	0%
% of Indictments with outcome other than death penalty	96%
Commutations	1
Re-sentences	2
Natural death, prior to execution	1
Executions	2
Men on Death Row	12

former prosecutors within the Ohio Attorney General's office. The committee would examine death penalty-eligible cases throughout Ohio and make a decision as to whether the death penalty should be pursued in each instance. Such a charging committee would also provide an additional stop-gap to help prevent wrongful convictions.

A charging committee is not without precedent. Federal prosecutors are required to follow such a policy. Federal prosecutors submit intent to seek the death penalty then a seasoned review panel determines how the prosecution will go forward. Nevertheless, three Ohio prosecutors on the Task Force opposed this idea. They wrote a dissenting report opposing this and 24 other recommendations, including the one recommendation made by the prosecutor subcommittee.

The Ohio Supreme Court Task Force made the following recommendations concerning racial disparities and geographic bias:

Recommendation	Subcommittee	Task Force Vote
29. Mandate through the Rule 20 Committee that all attorneys who practice capital litigation must take a certain number of CLE hours on the issue of racial bias. Mandate mandatory CLE for prosecutors who prosecute death penalty cases to educate them on how to protect against racial bias in the arrest, charging and prosecution of death penalty cases. Mandate that Judges assigned to death penalty cases must also attend specialized training regarding racial bias in death cases and how to protect against it.	Race & Ethnicity	12-2
30. Mandate that any judge who reasonably believes that any state actor has acted on the basis of race in a capital case be reported to the Office of Disciplinary Counsel or, if not an attorney, to the appropriate supervisory authority.	Race & Ethnicity	12-2
31. Mandate through the Rule 20 Committee that all Rule 20 approved trainings must include at least one hour of training regarding the development of discrimination claims in death penalty cases and how to preserve Batson issues for appellate review.	Race & Ethnicity	13-1
32. Mandate that an attorney must seek the recusal of any judge where "a reasonable basis for concluding that the judge's decision making could be affected by racially discriminatory factors" and should the judge not recuse, if the attorney still believes there is a reasonable basis for concluding that the judge's decision making could be affected by racially discriminatory factors, then the attorney shall file an affidavit of bias with the Chief Justice of the Supreme Court of Ohio.	Race & Ethnicity	8-1
33. Based upon data showing that prosecutors and juries overwhelmingly do not find felony murder to be the worst of the worst murders, further finding that such specifications result in death verdicts 7% of the time or less when charged as a death penalty case, and further finding that removal of these specifications will reduce the race disparity of the death penalty, it should be recommended to the legislature that the following specifications be removed from the statutes: Kidnapping, Rape, Aggravated Arson, Aggravated Robbery, and Aggravated Burglary.	Race & Ethnicity	12-2
34. To address cross jurisdictional racial disparity, it is recommended that Ohio create a death penalty charging committee at the Ohio Attorney General's Office. It is recommended that the committee be made up of former county prosecutors, appointed by the Governor, and members of the Ohio Attorney General's staff. County prosecutors would submit cases they want to charge with death as a potential punishment. The Attorney General's office would approve or disapprove of the charges paying particular attention to the race of the victim(s) and defendant(s).	Race & Ethnicity	8-6
35. Enact legislation allowing for racial disparity claims to be raised and developed in state court through a Racial Justice Act with such a claim being independent of whether the client has any other basis for filing in that court.	Race & Ethnicity	13-1
36. To ensure a more representative jury pool, enact legislation that requires every jurisdiction to create jury pools from the lists of all registered voters and all licensed drivers, who are U.S. citizens, rather than only the voter registration list.	Defense Services	12-2

## Recommendation 19 re: studying the needs of victims' families

The families of murder victims reel from the loss of a loved one and often have few resources to turn to after the crime. Victim and witness assistance programs operate within the prosecutor's office and are often geared to the prosecution of the cases, while victims may need more forms of support and a lengthier period to help them deal with their loss.

In December 2014, the Ohio legislature passed Sub. H.B. 663. While the bill's focus was the means and manner of obtaining drugs for lethal injection, it also included a Task Force recommendation that urged the legislature to study the needs of victims' families, namely:

Recommendation	Subcommittee	Task Force Vote
19. Victim's family – the legislature should study how to best support families of murder/homicide victims in the short and long term. (PASSED in Sub. H.B. 663)	Defense Services	19-0

*NOTE: Although the Task Force unanimously recommended the legislature study how best to support families of homicide victims, and the legislature enacted this study as part of the Secret Executions bill (Sub. H.B. 663), the legislative committee charged with conducting the study of victims' families needs has not been appointed by House and Senate leaders.<sup>50</sup>*

## The Cost of Ohio's Death Penalty

Ohio prosecutors, courts, and the prison system do not track expenses associated with death penalty cases. In addition, Ohio has never conducted a comprehensive study of death penalty costs to the state. However, the cost of maintaining a death penalty system in Ohio is not a completely unknown: in early 2014, the *Dayton Daily News* and WHIO-TV Channel 7, a CBS affiliate, conducted an in-depth investigation to uncover how much Ohio spends to carry out capital punishment. Although the investigation's findings were described as preliminary, the results were staggering: at least \$16,872,000 every year went to maintaining the death penalty.<sup>51</sup> Based on financial information produced by other states, this number is likely well below the actual figure a study would produce. Additionally, they found that the average cost of a death penalty trial, conviction, and execution is at least \$3,000,000.<sup>52</sup> The findings also noted these costs were most likely lower than actual costs.

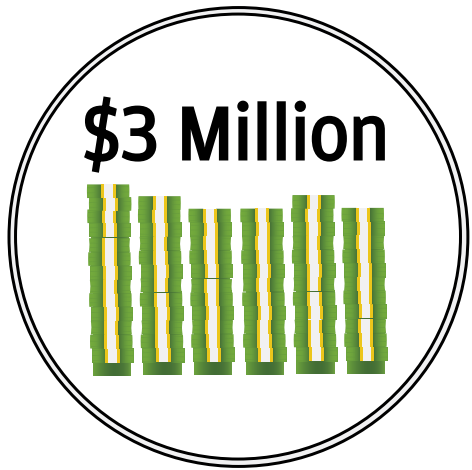
How does the death penalty compare to alternative sentencing options? The sentence of Life Without Parole (LWOP) costs the State of Ohio approximately \$1.1 million.<sup>53</sup> This puts the cost

2014 Focus On Trumbull County	
Indictments since 1981	62
Indictments that resulted in a death sentence	11 (17.7%)
Offenders (White)	45.45%
Offenders (Black)	54.55%
Offenders (Other)	0%
Victims (White)	86.67%
Victims (Black)	13.33%
Victims (Other)	0
% of Indictments with outcome other than death penalty	82.3%
Executions	3
Men on Death Row	7
Women on Death Row	1



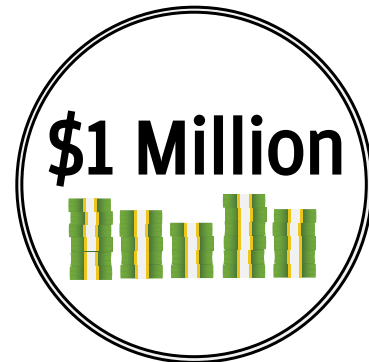
How much more expensive is the death penalty than alternative sentencing options?

## The Death Penalty



OR

## Life Without Parole



of a death penalty case at least three times more than the alternative of a trial where the maximum possible sentence is life imprisonment without the possibility of parole. Ohio's system is not unique in this regard; studies across the nation have shown that the death penalty simply costs more than alternative sentencing options.<sup>54</sup>

Why does the death penalty cost so much more than alternative sentencing options? Because death is different, and the US Supreme Court makes this clear.

The Court...has recognized that the qualitative difference of death from all other punishments requires a correspondingly greater degree of scrutiny of the capital sentencing determination.<sup>55</sup>

Death penalty cases require more resources at both phases of the trials. Additional experts, investigation, and evidence are necessary for the sentencing phase. To satisfy due process and the rights of the accused, and to make every effort to ensure we do not convict and execute innocent people, a death sentence requires multiple appeals that can last decades. Finally, housing on Death Row is more expensive than general population due to additional prison staff and security protocols.

The high cost of the death penalty should be considered as state legislators look to allocate resources in effective ways to reduce crime and assist victims and their families. Small counties that are forced to undertake the financial burden of prosecuting a death penalty case (as a result of the prosecutor

2014 Focus On Clark County	
Indictments since 1981	56
Indictments that resulted in a death sentence	7 (12.5%)
Offenders (White)	57.15%
Offenders (Black)	28.57%
Offenders (Other)	14.29%
Victims (White)	80%
Victims (Black)	20%
Victims (Other)	0%
% of Indictments with outcome other than death penalty	87.5%
Post-Death Penalty Conviction Relief	2 (28.6%)
Executions	0
Men on Death Row	5

## National Trends

Indiana	Colorado
Found that the death penalty was 5 times more expensive when compared to LWOP.	Capital proceedings require 6x more days in court than LWOP proceedings.
California	Nevada
The cost of the death penalty in the state has totaled more than \$4 billion since 1978, while executing 13 men since 1978.	On average, a death penalty case cost \$532,000 more – or more than 1.5 times more – than a case where the death penalty is not involved.

exercising duly granted discretion) are examples of how the high cost can affect the court system in a community. Six months after a 2003 month-long capital trial in Delaware County, the prosecutor's team of 10 lawyers was still working through a backlog of over 500 felony indictments.<sup>56</sup> In Vinton County, the 2002 death penalty trial of George McKnight shut down the entire county's court system for three weeks due to the overburdening cost of proceedings.<sup>57</sup>

Last year Summit County courts ran a deficit of more than \$400,000 for indigent defense alone.<sup>58</sup> Investigating the huge overspend, the *Akron Beacon Journal* wrote:

"In the latest court filings, through mid-December, court-approved expenses for the defense lawyers

and expert witnesses in the continuing capital murder case of 23-year-old Deshanon Jammal Haywood alone have exceeded \$43,000, with a third round of jury selection set to begin April 27.

Capital murder cases put a huge strain on the county's budget, and Summit prosecuted seven such death-penalty cases."<sup>59</sup>

Addressing the issue of strain on budgets from handling so many death penalty cases, Assistant Summit County prosecutor Brad Gessner told the *Beacon Journal*, "it was an anomaly based on the amount of violent and vicious murders out there. If you look year to year, 2013 stands all by itself in that regard," Gessner said.

Based on a review of death penalty indictments, year by year, Summit County filed one or more death penalty cases each year from 1999-2014 except in 2002 and 2011.<sup>60</sup> Most years during that time period Summit County filed three or more death penalty cases. The high costs of death penalty cases were bound to catch up with Summit County at some point. In the proper context, there is a trend in Summit County. It is one of consistent use of the death penalty system. The reality is, it is an anomaly when Summit County does not initiate a new death penalty case.

Ashtabula County has decided to request the Ohio Attorney General's office try two of its three death penalty cases, presumably due to the high costs or due to the lack of capital prosecution experience and personnel by Ashtabula prosecutors. One defendant, Taquan Mathers, faced a 2012 murder charge for shooting a 22-year old Youngstown man. The grand jury ruled it self-defense.<sup>61</sup>

2014 Focus On Stark County	
Indictments since 1981	80
Indictments that resulted in a death sentence	6 (7.5%)
Offenders (White)	50%
Offenders (Black)	50%
Offenders (Other)	0%
Victims (White)	72.72%
Victims (Black)	27.27%
Victims (Other)	0%
% of Indictments with outcome other than death penalty	92.5%
Post-Death Penalty Conviction Relief	1 (16.7%)
Executions	0
Men on Death Row	5

# Changes to the Execution Protocol and Moratorium

Because of the botched execution of Dennis McGuire, the Ohio Department of Rehabilitation and Correction (ODRC) committed to a thorough review of the execution process. In somewhat contradictory fashion, it concluded that McGuire did not suffer any pain during his prolonged and irregular execution, yet the Department nevertheless changed the dosages of the drugs in its protocol to include five times more midazolam and one-fifth more hydromorphone “to reaffirm that the drugs will, without doubt, cause profound general anesthetic and ventilatory depressant effects.”<sup>62</sup>

The increase in dosage Ohio made to its execution protocol post-McGuire (to 50 mg hydromorphone and 50 mg midazolam)<sup>63</sup> is the same dosages used by the state of Arizona in the botched execution of Joseph Wood.<sup>64</sup>

Shortly after the dosage change by Ohio, U.S. District Judge Gregory Frost issued an order that placed a moratorium on the death penalty in Ohio until August 2014, so that the constitutionality of the new protocol could be examined.<sup>65</sup> This action by Judge Frost rescheduled the execution of Death Row inmate Ronald Phillips, who was set to have been put to death on September 18, 2014. Then in August 2014, Judge Frost extended the moratorium through January 15, 2015, citing an ongoing national legal debate over the drugs (namely, midazolam) that had been used in botched executions across the country. This extension caused a set of executions to be re-scheduled for Death Row inmates Ronald Phillips, Raymond Tibbets, and Gregory Lott.<sup>66</sup>

## 2014 Focus On Mahoning County

Indictments since 1981	103
Indictments that resulted in a death sentence	12 (11.7%)
Offenders (White)	28.57%
Offenders (Black)	71.43%
Offenders (Other)	0%
Victims (White)	52.63%
Victims (Black)	36.84%
Victims (Other)	10.53%
Left Death Row, Not By Execution	50%
% of Indictments with outcome other than death penalty	88.3%
Executions	2
Men on Death Row	6

Historic drug shortages, due to pharmaceutical companies’ opposition to having their products used for capital punishment, was a growing obstacle to ODRC obtaining the necessary ingredients for its lethal injection drug cocktail. In response, the department announced as early as 2013 that it would consider obtaining drugs from non-FDA regulated compounding pharmacies. These small businesses are able to concoct small-batch drug orders for clients and are free from the same federal regulatory oversight that to which larger pharmaceutical companies are subject.<sup>67</sup>

As ODRC looked to compounding pharmacies as its new back-up plan, it found friends in the Ohio Attorney General’s office and state legislature. State senators and representatives quickly composed and passed Sub. H.B. 663 in December 2014, during the legislature’s lame duck session. The bill drastically altered the way in which information regarding executions will be handled by the State of Ohio moving forward. Sub. H.B. 663, nicknamed “The Secret Executions Bill,” enabled the



following changes:<sup>68</sup>

- 20 years of anonymity to drug manufacturers (compounding pharmacies) that supply ODRC with execution drugs. Individual names would be kept forever secret.
- Ohio Ethics Commission would confidentially review execution drug contracts with manufacturers to ensure there are no conflicts of interest.
- Physicians who testify about Ohio's execution method could not have their state medical license taken away by the state's medical board.
- In addition, to make it harder for opponents to condemn the effort, the bill implemented four of the fifty-six recommendations from the Ohio Supreme Court Task Force to Review the Administration of Ohio's Death Penalty

As Judge Frost's extended moratorium was set to expire and the first execution loomed, ODRC made an announcement in early January 2015 that it would change its lethal injection protocol by eliminating the use of midazolam and hydromorphone.<sup>69</sup> Instead the Department said it will only use one drug, sodium thiopental, in future executions. To allow time for the Department to procure the new drug, Governor John Kasich's administration announced that all executions would be postponed until 2016.<sup>70</sup> As a result, Ohio's executions schedule included dates for 15 men in 2016 and 2017.<sup>71</sup>

2014 Focus On Lucas County	
Indictments since 1981	133
Indictments that resulted in a death sentence	23 (17.3%)
Offenders (White)	17.39%
Offenders (Black)	78.26%
Offenders (Other)	4.34%
Victims (White)	55.17%
Victims (Black)	31.03%
Victims (Other)	13.79%
Left Death Row, Not By Execution	34.78%
% of Indictments with outcome other than death penalty	82.7%
Executions	4
Men on Death Row	11

## Support for Repeal Grows

### ***Former Ohio Governor Bob Taft Asks if Death Penalty is Dead Man Walking***

Governor Taft reflected on his personal agony dealing with capital punishment in a December 2014 article for the University of Dayton magazine, *UDQuickly*.<sup>72</sup> He was the first Ohio governor in 36 years to preside over an execution when Wilford Berry was put to death on Feb. 19, 1999. In his concluding paragraphs, he wrote,

"Considering the cases that came to me and developments after I left office in 2007, I believe the days of the death penalty may be numbered, in Ohio and across the country. The U.S. Constitution bars "cruel and unusual punishment." In one of the last executions during my term in office, since the convicted person had been a drug user, it was extremely



“ I believe the days of the death penalty may be numbered, in Ohio and across the country. ”

Bob Taft,  
Former Ohio Governor

difficult to find a vein in which to insert the lethal injection. The execution took an agonizing 40 minutes. Federal courts have declared moratoriums on the death penalty in Ohio due to complications such as this one.

“Questions have been raised about whether the death penalty can be administered consistently and without discrimination across Ohio’s 88 counties. Moreover, death penalty cases drag on through one appellate level after another, putting years, even decades, between the date of the crime and the date of punishment; the death sentence is certainly not swift punishment. The death penalty is very costly to administer; lengthy trial and appellate procedures put a burden on county and state governments to pay for lawyers, judges and jails.

“Ohio prosecutors have been seeking the death penalty less frequently since the life-without-parole option was created by the legislature in 1996 as an alternative sentencing option. In 2013, Ohio prosecutors filed only nine death penalty cases, the fewest since capital punishment was reinstated in 1981; and in the last decade, death penalty cases are down by more than 40 percent compared to the previous decade. It may be time to ask the question whether the death penalty in Ohio is a “dead man walking.”

### **Former Ohio Attorney General Jim Petro Says It Doesn’t Work**



“ I think it’s time to end it in Ohio. I don’t think we need it. ”

Jim Petro,  
Former Ohio Attorney General

Former Attorney General Jim Petro and his wife, Nancy, spoke to the Joint Task Force to Review the Administration of Ohio’s Death Penalty in August of 2013. At the meeting, the Petros raised their concerns about wrongful convictions and the possibility that innocent people are on Death Row. Jim Petro told the Task Force, “My simple standard is this: I believe society has the right to exact the ultimate punishment. I don’t have any moral objection to the death penalty;” he noted his concerns are entirely practical: “It doesn’t work.”

Petro gave a speech on the Ohio House floor in the 1980’s, saying the death penalty would be a deterrent for horrendous crimes and would save money, because inmates wouldn’t be housed in prison the rest of their lives. He was a primary author of Ohio’s current death penalty statute. The first 19 Ohio executions occurred on his watch as Ohio Attorney General, and after leaving office, he

and his wife became advocates for uncovering wrongful convictions. Petro now believes the death penalty should never be used.

“I think it’s time to end it in Ohio. I don’t think we need it,” Petro told the *Columbus Dispatch* earlier this year. “As a society, it puts us at risk of grievous error that can never be reversed. What I have learned in my work in wrongful convictions is there’s too many times when there’s not an absolute sure thing.”<sup>73</sup>

## **Ohio Supreme Court Justice Paul Pfeifer Says It is Time to Abolish Death Penalty**

Ohio Supreme Court Justice Paul Pfeifer has now spoken out repeatedly about his opposition to Ohio's death penalty law, which incidentally, he helped write in 1981. In 2011 he penned an op-ed published in the *Cleveland Plain Dealer* in which he wrote:<sup>74</sup>

"...I helped craft the law, and I have helped enforce it. From my rather unique perspective, I have come to the conclusion that we are not well served by our ongoing attachment to capital punishment.

"Why the change? In short, because the death penalty law is not being applied as we originally intended.

"[...]But life without parole now offers us a viable alternative to the death penalty, and it's an option that can satisfy our desire to punish killers for their crimes. There are, however, dozens of inmates on Death Row who were convicted before that option was available. How many of them would have been sentenced to death if the life-without-parole option had been available at the time? No one knows. All we know is that there are many people who will be put to death because they were convicted at the wrong time.

"So, I ask: Do we want our state government -- and thus, by extension, all of us -- to be in the business of taking lives in what amounts to a death lottery? I can't imagine that's something about which most of us feel comfortable. And, thus, I believe the time has come to abolish the death penalty in Ohio."



“The death penalty law is not being applied as we originally intended.”

Judge Paul Pfeifer,  
Ohio Supreme Court Justice

## **Lucas County Prosecutor Julia Bates on Death Penalty as Torture**

Julia Bates, the current Lucas County prosecutor, challenged the death penalty in an article in *The Toledo Blade*.<sup>75</sup> In the article, Prosecutor Bates stated, "If you've done a purposeful killing or a felony murder you can get life without parole — you can try it, plead to it — but we can get that, and we don't have to go through what is torturous really."

"Death-penalty cases are 'torturous,'" she said, "for juries and judges charged with deciding whether someone should live or die, torturous for defense lawyers and prosecutors whose work really just begins when a defendant is convicted, torturous for victims' families who must suffer through 15 to 20 years of appeals, and torturous for defendants sitting for years in solitary confinement on Death Row. It just seems there ought to be a better way."



“It just seems there ought to be a better way.”

Julia Bates,  
Lucas County Prosecutor



“ I have evolved to where I don’t think the death penalty is effective. ”

Judge Evelyn Stratton,  
Former Ohio Supreme Court Justice

## ***Retired Ohio Supreme Court Justice Evelyn Stratton Calls Death Penalty Ineffective***

Retired Ohio Supreme Court Justice Evelyn Stratton announced her opposition to the death penalty in June 2013.<sup>76</sup> “I have evolved to where I don’t think the death penalty is effective.” She noted its failure as a deterrent and its inability to provide closure to victim’s family members. In closing she said, “I don’t have a moral inhibition... Overall, it’s just not the best way to deal with it on a number of different levels.”

Justice Stratton, a Republican, reviewed the cases of the 49 inmates who were executed during her time on the court from 1996 to 2011.

## ***Terry Collins, former Director of Ohio Department of Rehabilitation and Correction, Calls Reform No-Brainer***



“ If you make a mistake and you execute someone, that’s it. ”

Terry Collins,  
Former Director, Ohio Department of  
Rehabilitation and Correction

The retired director of the Ohio Department of Rehabilitation and Corrections, Terry J. Collins, spoke openly about his opposition to the death penalty at a luncheon for the Cleveland City Club in December 2013. The moderator of the discussion asked the former Director, who oversaw 33 executions during his career, why he has become a public opponent of the death penalty. Mr. Collins responded: “Every time I did an execution...that question remaining, ‘did we get this right?’ and knowing we have the greatest justice system in the world but we can still make mistakes. If you make a mistake and you execute someone, that’s it.”

More recently, Collins has been a speaker at numerous “Voices of Experience” public forums sponsored by Ohioans to Stop Executions across the state. He shares his history of how he came to head the department and why, now that he is no longer a state employee, he opposes the death penalty as a failed public policy. In discussing the reform recommendations of the Supreme Court Task Force on the Administration of Ohio’s Death Penalty, Collins says, “On the issue of executing people with severe mental illness, there does not need to be any debate. They should just pass that one right now and get it done. It’s a no-brainer.”<sup>77</sup>

## ***Ohio Supreme Court Justice William O’Neill Says Ohio Death Penalty is Unconstitutional***

Ohio Supreme Court Justice William O’Neill called the death penalty unconstitutional in January 2013, when he dissented in an order setting an execution date for Jeffrey Wogenstahl, a Hamilton County man convicted of the 1991 murder of Amber Garrett.<sup>78</sup>



Justice O'Neill wrote, "I would hold that capital punishment violates the Eighth Amendment to the Constitution of the United States and Article I, Section 9 of the Ohio Constitution. The death penalty is inherently both cruel and unusual and therefore is unconstitutional. Capital punishment dates back to the days when decapitations, hangings, and brandings were also the norm. Surely, our society has evolved since those barbaric days.... To date, 17 [now 18] states and the District of Columbia have eliminated the death penalty altogether. It is clear that the death penalty is becoming increasingly rare both around the world and in America. By definition it is unusual." He concluded, "The time to end this outdated form of punishment in Ohio has arrived. While I recognize that capital punishment is the law of the land, I cannot participate in what I consider to be a violation of the Constitution I have sworn to uphold."



“ I would hold that capital punishment violates the Eighth Amendment to the Constitution of the United States and Article I, Section 9 of the Ohio. ”

William O'Neill  
Ohio Supreme Court Justice

### ***Dr. Reginald Wilkinson, former Director of Ohio Department of Rehabilitation and Correction, Calls Ohio's Death Penalty Embarrassing***

Reginald Wilkinson, Director of Ohio Department of Rehabilitation and Correction from 1991 to 2006, oversaw many executions. Since his retirement he has repeatedly spoken out against the death penalty, and recently was quoted in the Dayton Daily News citing concerns about the high cost of capital punishment. He participated in the successful effort to prevent the execution of Kevin Keith and at that time was quoted in the *Columbus Dispatch*, "I'm of the opinion that we should eliminate capital punishment," he said. "Having been involved with justice agencies around the world, it's been somewhat embarrassing, quite frankly, that nations just as so-called civilized as ours think we're barbaric because we still have capital punishment."<sup>79</sup>



“ It's been somewhat embarrassing [...] because we still have capital punishment. ”

Reginald Wilkinson,  
Former Director of Ohio Department  
of Rehabilitation and Correction

## Conclusion

Thirty-four years have passed since the death penalty was reinstated in Ohio under the legal precept of "guided discretion" as mandated by the United States Supreme Court in *Gregg v. Georgia*. Yet, Ohio's death penalty system continues to demonstrate just as arbitrary an application as when the United States Supreme Court struck down all capital punishment statutes in the country in 1972, and Ohio's first attempt to fix it in 1978.

Ohio lawmakers who resurrected the death penalty in 1981 intended the law to be for Ohio's "worst of the worst offenders." A careful analysis of the death penalty's administration over the past 34

years reveals that the race of the victim, the county in which a crime occurs and the views of the county prosecutor are far more predictive of death sentences than any other factors. The premise that Ohio's death penalty is reserved for the "worst of the worst" offenders is a fallacy. It is, however, reserved disproportionately for those who kill white victims and who commit murders in select counties. In other words, those who are on Death Row are unlucky and hit "the death lottery." We have seen again that mistakes come to light with regularity and it is only a matter of time before another innocent Ohio Death Row prisoner is exonerated.

Ohio has not been able to consistently administer the ultimate punishment without error, misapplication or in a manner that sufficiently holds violent offenders accountable in the interest of justice. Continuing revisions to Ohio's lethal injection protocol and procedures indicate a much larger problem than the state's inability to follow its own rules. It is telling that Ohio cannot obtain execution drugs without resorting to experimentation or hiding behind a veil of secrecy.

The Ohio Supreme Court Joint Task Force to Review the Administration of Ohio's Death Penalty has largely concluded that the American Bar Association's 2007 assessment and critique of the death penalty is valid. Fortunately, there is a clear road map Ohio must take to ensure its system of capital punishment is fair and accurate. Fifty-two (52) of the 56 recommendations remain to be implemented. These recommendations were made by Ohio's own death penalty experts, mostly judges, academics and prosecutors, who served on a task force commissioned by the Ohio Supreme Court in 2011. They include obvious recommendations like increasing funding for Death Row defense counsel, certification for crime labs, and more far-reaching measures like narrowing the felony murder law and the prohibiting the execution of those suffering from serious mental illnesses. The 131st General Assembly must take up the common sense reforms recommended by the Supreme Court Task Force.

The institution of Ohio's capital punishment system is crumbling. If we are to have the death penalty in our state, then its most ardent supporters must demand assurances that it's application is fair, accurate and only used where appropriate. Failure to fully address the recommendations will leave us with a public policy that continues to make mistakes and demonstrates unevenness in its application. Time will tell. If fairness cannot be achieved in the application of the death penalty, then the more effective and efficient criminal justice policy is to repeal the death penalty once and for all.

# Appendix

**Table 1: Members of the Joint Task Force to Review the Administration of Ohio's Death Penalty**

Name	Description
Judge James Brogan, Chair	Retired Judge, Ohio Second District Court of Appeals
Sara Andrews	Deputy Director of Parole & Community Services, Ohio Department of Rehabilitation & Correction
Richard Bell	Assistant Prosecutor, Cuyahoga County Prosecutor's Office
Prof. Douglas Berman	Professor, The Ohio State University Moritz College of Law
Representative Margaret Conditt	Ohio House of Representatives, District 52
Prof. Phyllis L. Crocker	Professor, Cleveland-Marshall College of Law
Joseph T. Deters	Prosecutor, Hamilton County Prosecutor's Office
Judge Michael P. Donnelly	Judge, Cuyahoga County Common Pleas Court
Judge Linda J. Jennings	Judge, Lucas County Common Pleas Court
Judge Kathleen Keough	Judge, Ohio Eighth District Court of Appeals
Judge Stephen L. McIntosh, Vice-Chair	Judge, Franklin County Common Pleas Court
Ron O'Brien	Prosecutor, Franklin County Prosecutor's Office
John Parker	Criminal Defense Attorney
Jon Paul Rion	Attorney, Rion, Rion & Rion Co., LPA
Sheriff Tim Rodenberg	Sheriff, Clermont County Sheriff's Office
Judge John Russo	Judge, Cuyahoga County Common Pleas Court
Stephen Schumaker	Deputy Attorney General for Law Enforcement, Ohio Attorney General's Office

Name	Description
Senator Bill Seitz	Ohio Senate, District 8
Senator Shirley Smith	Ohio Senate, District 21
Judge John Solovan	Judge, Belmont County Common Pleas Court
Representative Michael Stinziano	Ohio House of Representatives, District 18
Judge Roger Wilson	Judge, Champaign County Common Pleas Court
Tim Young	Director, Office of the Ohio Public Defender

**Table 2: Recommendations from the Ohio Supreme Court Joint Task Force to Review the Administration of Ohio's Death Penalty.**

Recommendation	Subcommittee	Task Force Vote
1. Any in-custody interrogation shall be electronically recorded, or if not, statements are presumed involuntary.	Law Enforcement	13-5
2. Require that each coroner's office become accredited or have at least one person on staff or under contract who is a fellow of that organization, or have a contract with an accredited crime lab to perform specialized services when the need arises.	Law Enforcement	18-1
3. In a death-eligible case, excepting fingerprint evidence, if evidence is not originally reviewed by an accredited lab, the defense has a right to testing in an accredited lab at state expense, and no reference will be made to the first test (except to establish the evidence has been in the custody of the state). If testing of evidence prior to indictment will likely entail total consumption or destruction of evidence, the test must be performed in an accredited lab; and if it is to be tested after indictment, notice must first be given to all parties. If this requirement is not followed, the evidence is presumptively inadmissible unless good cause is shown to the trial court. On the request of the prosecution in a death penalty case, defense forensic experts shall also be required to rely on testing by accredited labs.	Law Enforcement Identifications and Interrogations	17-2
4. All crime labs in Ohio must be certified by a recognized agency defined by the Ohio legislature.	Law Enforcement	10-6
5. Enact legislation to require, prospectively, meaningful proportionality review to include cases where death was sought in the charges but not imposed; data also to be collected on all death-eligible homicides.	Defense Services	10-7
6. Mandating data to be collected on all death-eligible homicides.	Disparity	15-1
7. Amend legislation (R.C. 2929.03(F)) to include the prosecutor preparing a report on the rationale for any plea agreement in a case charged capitally that ends in a penalty less than death, and providing this to the Ohio Supreme Court.	Judicial Role	15-1
8. Enact legislation to consider and exclude from eligibility for the death penalty defendants who suffer from "serious mental illness," as defined by the legislature, at the time of the crime.	Defense Services	15-2
9. Enact legislation to exclude from eligibility from the death penalty defendants who suffer from "serious mental illness," at the time of execution.	Defense Services	12-7



Recommendation	Subcommittee	Task Force Vote
10. Where a pro se defendant (a person wishing to represent him or herself) is competent to stand trial but may not be competent to represent himself due to a mental health or developmental disability, the court may appoint counsel, or stand-by counsel, or co-counsel to assist the pro se defendant.	Judicial Role	11-1
11. Adopt the 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (and train counsel and judges on these).	Defense Services	12-2
12. Adopt the 2003 ABA Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (and train counsel and judges on these).	Defense Services	13-4
13. Enact and fund a capital litigation fund to pay for all costs, fees, and expenses.	Defense Services	19-0
14. Increase funding to the Office of the Ohio Public Defender to allow for additional hiring and training of qualified capital case attorneys who could be made available to all Ohio counties, except in circumstances where a conflict of interest arises.	Defense Services	20-0
15. Implement and fund a statewide public defender system for representation in all levels of capital cases except when a conflict of interest arises, when Rule 20 qualified counsel shall be appointed.	Defense Services	13-3
16. Private defense counsel appointed to represent death-eligible or death-sentenced defendants are to be equally paid throughout the State regardless of the location of the offense.	Defense Services	16-0
17. Enact legislation that Death can only be imposed if the state presented DNA, video, video-taped confession, or other compelling evidence that links the defendant to the murder.	Defense Services	12-6
18. Bar a death sentence where the state relies solely on jailhouse informant testimony that is not independently corroborated at the guilt/innocence phase.	Defense Services	19-0
19. Victim's family – the legislature should study how to best support families of murder/homicide victims in the short and long term. (PASSED)	Defense Services	19-0
20. Enact legislation to provide that a jury may try a case on retrial following reversal of a bench trial.	Defense Services	11-7
21. Amend Rule 20 of the Rules of Superintendence for Ohio Courts to increase in the number of continuing legal education hours for defense attorneys under Sup.R. 20.		
22. Court rules shall be amended so that properly presented motion must be accepted for filing for a ruling by the court in a death penalty cases.	Defense Services	18-0
23. Amend the qualifications necessary for post-conviction counsel.	Defense Services	18-0
24. Extend the filing period for a post-conviction relief (PCR) petition from 180 days to 365 days (after filing of the trial transcript/record in the Ohio Supreme Court). (PASSED)	Post-Conviction	17-0
25. Judicial review and findings required regarding each claim.	Post-Conviction	19-0
26. The common pleas clerk shall retain a copy of the original trial file in the common pleas clerk's office even though it sends the originals to the Supreme Court of Ohio in connection with the direct appeal.	Post-Conviction	19-0
27. PCR petitions page limitations removed.	Post-Conviction	14-3
28. Amend R.C. §2953.21 to provide for depositions and subpoenas during discovery and post-conviction relief.	Post-Conviction	13-3
29. Mandatory CLE for prosecutors and judges assigned to death cases on how to protect against racial bias.	Race & Ethnicity	12-2
30. A judge who reasonably believes a person any state actor has acted on the basis of race must report same to an appropriate supervisory authority.	Race & Ethnicity	12-2
31. Mandatory one hour CLE for defense counsel regarding development of race discrimination claims.	Race & Ethnicity	13-1
32. A defense counsel must seek recusal (asking the judge to remove themselves from hearing the case, or seeking removal by petitioning the Chief Justice of the Ohio Supreme Court), of any judge where there is a reasonable basis for concluding the judge's decision could be affected by racially discriminatory factors.	Race & Ethnicity	8-5

Recommendation	Subcommittee	Task Force Vote
33. Remove the following felony-murder specifications: aggravated murder in the course of kidnapping, rape, aggravated arson, aggravated robbery, and aggravated burglary as data shows death is rarely imposed and such will reduce the race (and geographic) disparity of the death penalty.	Race & Ethnicity	12-2
34. To address cross jurisdictional and racial discrepancy, creation of a Death Penalty Charging Committee at the Attorney General's Office to approve or disapprove of charges.	Race & Ethnicity	8-6
35. Adopt a Racial Justice Act allowing for free-standing racial disparity claims in Ohio courts.	Race & Ethnicity	13-1
36. Enact legislation requiring every jurisdiction to create jury pools from the list of all registered voters and all licensed drivers who are U.S. citizens.	Defense Services	12-2-1
37. Enact a court rule that mandates, for both the prosecution and defense, full and complete access in capital cases to evidence known to exist or with due diligence could be found to exist, with an opportunity to test such evidence – excluding work product, material protected under Rule 16, or inculpatory or privileged material.	Defense Services	17-0
38. Require the prosecutor to present to the grand jury available exculpatory evidence of which the prosecutor is aware.	Defense Services	10-9
39. Mandatory training for judges and mandatory pre-trial conferences on the record, as early as possible, addressing discovery, Brady disclosures, and appointment of experts (ex parte proceeding upon request of counsel regarding experts though on record), mandatory declaration of compliance by defense and prosecution with all discovery obligations and Brady.	Judicial Role	10-5
40. The Ohio statute providing for attorney-client privilege should be amended to provide that a claim of ineffective assistance waives the privilege in order to allow full litigation of ineffectiveness claims. The waiver will be limited to the issue raised. (PASSED)		
41. All parties will work on procedures to remove any impediments to a fair and timely resolution of death penalty cases in the Ohio courts.	Prosecutorial Issues	12-6
42. Clemency proceedings should include a formalized right to counsel.	Clemency	15-0
43. During clemency proceedings, the proceedings and interview of inmate are to be recorded; inmate's counsel allowed to counsel the client during the interview; Board must reveal all information it considers in reaching its decision; inmate's master file is to be released to inmate's counsel 6 months before hearing; state and inmate's counsel disclose and exchange all information is to be relied upon at the hearing 30 days prior to the hearing, with a continuing duty to disclose any new information to be relied upon; adequate funding for a mental health expert if needed and for private counsel representation.	Clemency	
44. Improve jury instructions by conducting an annual review.	Defense Services	16-0
45. Use "plain English" instructions.	Defense Services	14-1-1
46. Require jurors to receive written copies of the judge's entire oral charge. (PASSED)	Defense Services	16-0
47. Improving jury instructions by making clear that the jury must always be given the option of extending mercy that arises from the evidence.	Post-Conviction	10-8
48. Improving jury instructions making clear that the process for weighing aggravating and mitigating circumstances is not a numerical one.		
49. Expand and enhance training requirements to all participating legal counsel (appointed and retained) and to all Ohio judges at all levels, which could be waived in exceptional circumstances with the consent of the Ohio Supreme Court if their qualification otherwise exceed the standards required by the Rule.	Judicial Role	21-0
50. Implementation of educational guidance for Presiding Judges as to when and how to intervene (procedure to follow) in situations of potential ineffective lawyering.	Judicial Role	17-4
51. The Trial Judge is the appropriate authority to appoint legal counsel in a capital case.	Judicial Role	14-5
52. Directing that the trial judge is the appropriate authority for the appointment of experts for indigent defendants.	Judicial Role	13-5

Recommendation	Subcommittee	Task Force Vote
53. Adopt a uniform process for selection of indigent counsel, including establishing a uniform fee and expense schedule.	Judicial Role	20-0
54. Adopt a uniform process for selection of indigent counsel, including establishing a uniform fee and expense schedule, wherein the main objective should always be to assure the best educationally and experienced-qualified candidate.	Judicial Role	21-0
55. Adopt reporting standards to provide complete transparency of record, to assure strict compliance with due process that may include unique constitutional or evidentiary issues, significant motions, plea rationale, pre-sentence investigation, to be submitted to the Ohio Supreme Court on completion of the case.	Judicial Role	16-0
56. Adopt a rule to provide for the mandatory training of attorneys and judges, the selection and appointment of indigent counsel in capital cases, and the enforcement of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases and the Supplementary Guidelines for the Mitigation Function of Defense Teams	Judicial Role	16-0

**Table 3: Details on New  
Capital Indictments (21)\* in 2014**

Name of Defendant	County	Name(s) and Age(s) of Victim(s), if known	Status
Metsker, Jerrod E.	Wayne (2013)	Reann Murphy, 9	Entered plea deal, serving LWOP
Furin, Aaron A.	Medina (2013)	Daryl Carney, 37	Entered plea deal, serving 15 years - life
Ford, Jr. Shawn E.,	Summit (2013)	Jeffrey Schobert, 56, and his wife Margaret Schobert, 59	Guilt phase concluded; sentencing postponed pending psychological testing
Puccio, Matthew Starr	Champaign (2012)	Jessica Rae Sacco, 21	Sentenced to 30 years - life
Johnson, Mikal	Stark (2013)	Eugene H. Render, 88	Sentenced to LWOP
Hendon, Eric D.	Summit	John Kohler, 42, and his two children, Ashley Carpenter, 18, and David Kohler Carpenter, 14	Capital trial pending
Hendon, Michael S.	Summit	John Kohler, 42, Ashley Carpenter, 18, David Kohler Carpenter, 14	Capital trial pending
Fox, John R.	Portage	Justin Earley, 22	Plead no contest, serving LWOP
Burris, Adam Charles	Guernsey	Kayla Thompson, 26	Entered plea deal, serving 30 years - life
Mosley, Timothy Edward	Warren	Justin Back, 18	Entered plea deal, serving LWOP
Myers, Austin Gregory	Warren	Justin Back, 18	Sentenced to death 10/16/2014
Lashley, Jr., Marcus	Ashtabula	Alexis Xavier Mook-Colon, 20 Lydia Aviles Mook-Colon, 43	Capital trial pending
Mathers, Taquan	Ashtabula	Alexis Xavier Mook-Colon, 20 Lydia Aviles Mook-Colon, 43	Capital trial pending
Million, Joshua L.	Ashtabula	Melanie Powell, 4	Entered plea deal, serving LWOP
Rutherford, Alfred	Butler	Lacey Rutherford, 29 Steve Watkins, 41	Entered plea deal, serving LWOP
Dumas, Willie L.	Franklin	Anna Eblen, 89	Capital trial pending
Williams, Iv Ricki D.	Mahoning	Gina Burger, 16	Capital trial pending

Name of Defendant	County	Name(s) and Age(s) of Victim(s), if known	Status
Noffsinger, Steven G.	Paulding	Alma Noffsinger	Trial pending (non-capital)
Martin, David	Trumbull (2012)	Jeremy Cole, 21	Sentenced to death 09/24/2014
Hoffman, Donald W.	Crawford	Freelin Hensley, 67, and Billy Jack Chatman, Darrell Lewis, 65, and Jerald Smith, 65	Entered plea deal, serving LWOP
Coller, Patrick D.	Allen	Gerri Coller, 42	Entered guilty plea, awaiting sentence (non-death)
Rainey, Amond J.	Hamilton	Josiya Eves, 2	Capital trial pending
Diaz, Austin	Lorain (2012)	Lamar Taylor, 52	Sentenced to 15 years - life
Froman, Terry L.	Warren	Elizabeth Thomas, 34 Michael Mohny, 17	Capital trial pending
Sandy, Joseph	Erie	George Martin, 86	Capital trial pending
Hillman, Ronald	Cuyahoga	Michaela Diemer, 31	Capital trial pending
French, Daniel R.	Butler	Barbara Howe, 87	Capital trial pending
Ivery, Kenan D.	Summit	Officer Justin Winebrenner, 32	Capital trial pending

\*There is a discrepancy in the numbers of capital indictments. Ohio Supreme Court records indicate 28 notifications of death penalty cases by county prosecutors, though some notifications were for cases originating in 2012 and 2013. In 2014, there were only 21 new capital indictments.



## Citations

1. Death Penalty Information Center, *Innocence: List of Those Freed From Death Row.* Accessed March 30, 2015. <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?s-cid=6&did=110>
2. Swenson, Kyle. *Cleveland Scene Magazine*, "Good Kids, Bad City: After 39 Years of Wrongful Incarceration, Ricky Jackson and the Bridgeman Brothers Walk Free." December 3, 2014. <http://www.clevescene.com/scene-and-heard/archives/2014/12/03/good-kids-bad-city-after-39-years-of-wrongful-incarceration-ricky-jackson-and-the-bridgeman-brothers-walk-free>
3. Death Penalty Information Center, "Innocence: List of Those Freed From Death Row." Accessed March 30, 2015. <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?s-cid=6&did=110>
4. The National Registry of Exonerations, A Project of the University of Michigan School of Law. Available at <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx> and Death Penalty Information Center, "Innocence Database." Available at <http://www.deathpenaltyinfo.org/innocence>
5. See Table 3 in Appendix.
6. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
7. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
8. Scott, Cathy. *Psychology Today*, "Justice for Murder Victim and Family 3 Decades Later." September 16, 2014. <https://www.psychologytoday.com/blog/crime-she-writes/201409/justice-murder-victim-and-family-3-decades-later>
9. Gerbers, Denise. *Paulding Progress*, "Murder Charge Specification Dismissed." October 21, 2014. <http://www.progressnewspaper.org/Content/News/News/Article/Murder-charge-specification-dismissed/198/1182/188045>
10. Gerbers, Denise. *Paulding Progress*, "Noffsinger Murder Trial Set for April." February 3, 2015. <http://www.progressnewspaper.org/Content/News/News/Article/Noffsinger-murder-trial-set-for-April/198/1182/189004>
11. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
12. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
13. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
14. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
15. Supreme Court of Ohio, Capital Indictment Table, available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
16. West, William A. *Ashtabula Current*, "Mathers arraigned on aggravated murder charges." March 21, 2014. <http://ashtabulacurrent.com/mathers-arraigned-on-aggravated-murder-charges/>
17. Franko, Kantele. *Associated Press*, "Prosecutor: Ohio man on cocaine binge killed 4, seeking money." January 14, 2015. Accessed March 30, 2014. <http://www.aol.com/article/2015/01/14/prosecutor-ohio-man-on-cocaine-binge-killed-4-seeking-money/21129887/>
18. Franko, Kantele. *Associated Press*, "Prosecutor: Ohio man on cocaine binge killed 4, seeking money." January 14, 2015. Accessed March 30, 2014. <http://www.aol.com/article/2015/01/14/>

- prosecutor-ohio-man-on-cocaine-binge-killed-4-seeking-money/21129887/
19. Office of the Ohio Public Defender, "Death Row Residents." Last modified February 2015. Last accessed March 30, 2015. [http://www.opd.ohio.gov/DP\\_ResidentInfo/dp\\_CurrentResidents.pdf](http://www.opd.ohio.gov/DP_ResidentInfo/dp_CurrentResidents.pdf)
  20. Office of the Ohio Public Defender, "Death Row Residents." Last modified February 2015. Last accessed March 30, 2015. [http://www.opd.ohio.gov/DP\\_ResidentInfo/dp\\_CurrentResidents.pdf](http://www.opd.ohio.gov/DP_ResidentInfo/dp_CurrentResidents.pdf)
  21. Unattributed. *Tribune Chronicle*, "Death Row Sentence Overturned." October 23, 2013. <http://www.tribtoday.com/page/content.detail/id/594725/Death-row-sentence-overturned.htm-l?nav=5021>
  22. Runyan, Ed. *Youngstown Vindicator*, "Trumbull jury recommends death for murderer David Martin." September 18, 2014. <http://www.vindy.com/news/2014/sep/18/jury-recom-mends-death-penalty-for-convic/>
  23. Richardson, Rachel. *Cincinnati Enquirer*, "Judge sentences Warren County teen to death." October 16, 2014. <http://www.cincinnati.com/story/news/courts/2014/10/16/judge-sentences-war-ren-co-teen-to-death/17356109/>
  24. Office of the Ohio Attorney General, "2013 Annual Capital Crimes Report." April 1, 2014. <http://www.ohioattorneygeneral.gov/getattachment/f8e455c3-b5b1-4ab5-bc24-4af0fe41273/2013-Capital-Crimes-Annual-Report.aspx>
  25. Ohio Department of Rehabilitation and Correction, "Ohio Executions - 199 to Present." last accessed March 30, 2015. <http://www.drc.ohio.gov/web/executed/executed25.htm>
  26. Unattributed. *Associated Press*, "Ohio's longest execution places future of states' efforts to obtain lethal drugs in doubt." January 18, 2014. <http://www.foxnews.com/us/2014/01/18/ohio-longest-execution-places-future-states-efforts-to-obtain-lethal-drugs-in/>
  27. Higgs, Robert. *Cleveland Plain Dealer*, "State executed murderer Dennis McGuire, marking first use of new blend of drugs for lethal injection." January 16, 2014. [http://www.cleveland.com/open/index.ssf/2014/01/state\\_executes\\_murderer\\_dennis.html](http://www.cleveland.com/open/index.ssf/2014/01/state_executes_murderer_dennis.html)
  28. Crair, Ben. *New Republic*, "Exclusive Emails Show Ohio's Doubts About Lethal Injection." August 17, 2014. <http://www.newrepublic.com/article/119068/exclusive-emails-reveal-states-wor-ries-about-problematic-execution>
  29. Welsh-Huggins, Andrew. *Associated Press*, "States' leading lethal injection expert ends role." August 20, 2014. <http://www.ksl.com/?nid=157&sid=31217821>
  30. Transcript of Motions Hearing, Vol. 2 at 25-29 of 111, Page ID 12382-12386, In re: *Ohio Execution Protocol Litig.*, No. 2:11-cv-1016, Doc. No. 433 (S.D. Ohio Jan. 12, 2014).
  31. Ohio Department of Rehabilitation and Correction, Death Row Clemency Report In Re: Arthur Tyler, A175-637, April 29, 2014. [http://www.drc.ohio.gov/public/clemency\\_tylerarthur.pdf](http://www.drc.ohio.gov/public/clemency_tylerarthur.pdf)
  32. Ohio Department of Rehabilitation and Correction, "Death Row Clemency Reports." Accessed March 30, 2015.
  33. Higgs, Robert. *Cleveland Plain Dealer*, "Gov. John Kasich grants reprieve to inmate Arthur Tyler, commuting sentence to life without parole." April 30, 2014. [http://www.cleveland.com/open/index.ssf/2014/04/gov\\_john\\_kasich\\_grants\\_repriev.html](http://www.cleveland.com/open/index.ssf/2014/04/gov_john_kasich_grants_repriev.html)
  34. Pelzer, Jeremy. *Cleveland Plain Dealer*, "Life spared, reprieved death-row inmate Arthur Tyler to fight to someday go home." May 6, 2014. [http://www.cleveland.com/open/index.ssf/2014/05/life\\_spared\\_reprieved\\_death-ro.html](http://www.cleveland.com/open/index.ssf/2014/05/life_spared_reprieved_death-ro.html)
  35. Pelzer, Jeremy. *Cleveland Plain Dealer*, "Ohio executions will resume in 2016, state announces." January 30, 2015. [http://www.cleveland.com/open/index.ssf/2015/01/ohio\\_executions\\_will\\_re-sume\\_in.html](http://www.cleveland.com/open/index.ssf/2015/01/ohio_executions_will_re-sume_in.html)
  36. Ohio Department of Rehabilitation and Correction, "Execution Schedule." Last accessed March 30, 2015. <http://www.drc.ohio.gov/public/executionschedule.htm>

37. Ohio Department of Rehabilitation and Correction, "Ohio Executions - 1949" Last accessed March 30, 2015. <http://www.drc.ohio.gov/web/Executed/executed21.htm>
38. American Bar Association, Death Penalty Due Process Review Project, "Evaluating Fairness and Accuracy in State Death Penalty Systems: The Ohio Death Penalty Assessment Report." September 2007. <http://www.americanbar.org/content/dam/aba/migrated/moratorium/assessment-project/ohio/finalreport.authcheckdam.pdf>
39. Associated Press, "Ohio should suspend death penalty, ABA says." September 25, 2007. [http://www4.vindy.com/content/national\\_world/291891235859641.php](http://www4.vindy.com/content/national_world/291891235859641.php)
40. Welsh-Huggins, Andrew. Associated Press, "Top judge calls for death penalty review." September 9, 2011. <http://www.news-herald.com/general-news/20110909/top-judge-calls-for-death-penalty-review>
41. Supreme Court of Ohio, Joint Task Force to Review the Administration of Ohio's Death Penalty. "Final Report and Recommendations." April 2014. <http://www.sc.ohio.gov/Boards/deathPenalty/resources/finalReport.pdf>
42. *Atkins v. Virginia*, 536 U.S. 304 (2002) and *Roper v. Simmons*, 543 U.S. 551 (2005), respectively.
43. Shambaugh, Jessica. Akron Legal News, "Supreme Court of Ohio: Psychologist cannot testify after man abandons insanity defense." February 19, 2015. <http://www.akronlegalnews.com/editorial/12210>
44. Office of the Ohio Public Defender, "Franklin County Criminal Law Casebook." See Examinations; Proof, Trial Issues. Available at [http://www.opd.ohio.gov/rc\\_casebook/insanity.htm#Examinations; Proof; Trial issues](http://www.opd.ohio.gov/rc_casebook/insanity.htm#Examinations; Proof; Trial issues)
45. *Lockett v. Ohio*, 438 U.S. 586 (1978).
46. *Lockett v. Ohio*, 438 U.S. 586 (1978).
47. Death Penalty Experts Call for Reform in Wilmington. Prod. SaberCom. Perf. Timothy Young, Terry Collins and Joe D'Ambrosio. Oct. 2014. YouTube Video. Available at [https://www.youtube.com/watch?v=wq08Q\\_we1UA](https://www.youtube.com/watch?v=wq08Q_we1UA)
48. Office of the Ohio Public Defender "Race and Specifications Data." 2014. Available at [http://www.otse.org/wp-content/uploads/2015/03/OTSE\\_Race\\_and\\_Specs.xlsx](http://www.otse.org/wp-content/uploads/2015/03/OTSE_Race_and_Specs.xlsx)
49. See Appendix, Table 1.
50. The Ohio Legislature, 131st General Assembly, "Committee Directory." Last accessed March 30, 2015. <https://www.legislature.ohio.gov/committees/committee-directory> and The Ohio House of Representatives, 131st General Assembly, "Joint Legislative Committees." Last accessed March 30, 2015. <http://www.ohiohouse.gov/committee/joint-legislative-committees>
51. Bishoff, Laura and Josh Sweigart. Dayton Daily News, "Execution costs rising." February 22, 2014. <http://www.mydaytondailynews.com/news/news/crime-law/execution-costs-rising/ndXd-Q/#9f0004ae.3951802.735673>
52. Otte, Jim. WHIO-TV 7 Dayton, "I-Team: The cost of executions." February 20, 2014. <http://www.whio.com/news/news/local/i-team-cost-executions/ndWyf/>
53. Otte, Jim. WHIO-TV 7 Dayton, "I-Team: The cost of executions." February 20, 2014. <http://www.whio.com/news/news/local/i-team-cost-executions/ndWyf/>
54. Bishoff, Laura and Josh Sweigart. Dayton Daily News, "Execution costs rising." February 22, 2014. <http://www.mydaytondailynews.com/news/news/crime-law/execution-costs-rising/ndXd-Q/#9f0004ae.3951802.735673>
55. *California v. Ramos*, 463 U.S. 992, 998-99 (1983).
56. Welsh-Huggins, Andrew. "No Winners Here Tonight: Race, Politics and Geography in One of the Country's Busiest Death Penalty States," Ohio University Press (2009).
57. Roberts, Kate. Associated Press, "Capital cases hard for smaller counties," May 8, 2005. <http://>

[www.deathpenaltyinfo.org/node/1447](http://www.deathpenaltyinfo.org/node/1447)

58. Meyer, Ed. *Akron Beacon Journal*, "Summit County court records show \$400,000 deficit in fund to pay for indigents' defense," January 4, 2015. <http://www.ohio.com/news/local/summit-county-court-records-show-400-000-deficit-in-fund-to-pay-for-indigents-defense-1.555211>
59. Meyer, Ed. *Akron Beacon Journal*, "Summit County court records show \$400,000 deficit in fund to pay for indigents' defense," January 4, 2015. <http://www.ohio.com/news/local/summit-county-court-records-show-400-000-deficit-in-fund-to-pay-for-indigents-defense-1.555211>
60. Supreme Court of Ohio, "Capital Indictment Table", available at <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>. Last visited March 30, 2015.
61. Terry, Shelly. *Star Beacon*, "Norman Avenue murders: Who are Taquan Mathers and Marcus Lashley?" March 14, 2014. [http://www.starbeacon.com/news/local\\_news/norman-avenue-murders-who-are-taquan-mathers-and-marcus-lashley/article\\_9ca21071-9292-572a-8e57-47a888a5c781.html](http://www.starbeacon.com/news/local_news/norman-avenue-murders-who-are-taquan-mathers-and-marcus-lashley/article_9ca21071-9292-572a-8e57-47a888a5c781.html)
62. Ohio Department of Rehabilitation and Correction, "After-Action Review of Execution of Dennis McGuire". April 28, 2014. <https://s3.amazonaws.com/s3.documentcloud.org/documents/1149721/ohio-review-of-dennis-mcguire-execution.pdf>
63. Ohio Department of Rehabilitation and Correction, "After-Action Review of Execution of Dennis McGuire". April 28, 2014. <https://s3.amazonaws.com/s3.documentcloud.org/documents/1149721/ohio-review-of-dennis-mcguire-execution.pdf>
64. Kiefer, Michael. *The Republic*, "Arizona: Wood execution not botched, but execution drug to change." December 23, 2014. <http://www.azcentral.com/story/news/local/arizona/2014/12/22/arizona-execution-drug-change/20774877/>
65. Johnson, Alan. *Columbus Dispatch*, "Judge orders temporary moratorium on Ohio executions." May 29, 2014. <http://www.dispatch.com/content/stories/local/2014/05/28/temporary-moratorium-on-lethal-injections.html>
66. Johnson, Alan. *Columbus Dispatch*, "Moratorium on Ohio's executions extended until January." August 11, 2014. <http://www.dispatch.com/content/stories/local/2014/08/11/Moratorium-on-lethal-injections-in-Ohio-extended.html>
67. Death Penalty Information Center, "Compounding Pharmacies" Last accessed March 30, 2015. <http://www.deathpenaltyinfo.org/compounding-pharmacies>
68. Pelzer, Jeremy. *Cleveland Plain Dealer*, "Secrecy rules for execution-drug makers pass Ohio senate." December 11, 2014. [http://www.cleveland.com/open/index.ssf/2014/12/secrecy\\_rules\\_for\\_execution-dr.html](http://www.cleveland.com/open/index.ssf/2014/12/secrecy_rules_for_execution-dr.html)
69. Higgs, Robert. *Cleveland Plain Dealer*, "Ohio to discard controversial two-drug cocktail from use in executions." January 8, 2015. [http://www.cleveland.com/open/index.ssf/2015/01/ohio\\_to\\_discard\\_controversial.html](http://www.cleveland.com/open/index.ssf/2015/01/ohio_to_discard_controversial.html)
70. Petzer, Jetemy. *Cleveland Plain Dealer*, " Ohio executions will resume in 2016, state announces." January 30, 2015. [http://www.cleveland.com/open/index.ssf/2015/01/ohio\\_executions\\_will\\_resume\\_in.html](http://www.cleveland.com/open/index.ssf/2015/01/ohio_executions_will_resume_in.html)
71. Ohio Department of Rehabilitation and Correction, "Execution Schedule." Last accessed March 30, 2015. <http://www.drc.ohio.gov/public/executionschedule.htm>
72. Taft, Bob. *University of Dayton Magazine*, "No going back." December 29, 2014. <http://ud-quickly.udayton.edu/udmagazine/2014/12/no-going-back/>
73. Johnson, Alan and Mike Wagner. *Columbus Dispatch*, "Questions raised about the death penalty in Ohio." March 8, 2015. <http://www.dispatch.com/content/stories/local/2015/03/08/death-or-life.html>
74. Pfeifer, Paul E. *Cleveland Plain Dealer*, "Retire Ohio's death penalty." January 26, 2011. <http://>



- [www.cleveland.com/opinion/index.ssf/2011/01/retire\\_ohios\\_death\\_penalty\\_pau.html](http://www.cleveland.com/opinion/index.ssf/2011/01/retire_ohios_death_penalty_pau.html)
75. Feehan, Jennifer. *Toledo Blade*, "Death penalty cases ebb in Lucas County and Ohio." November 24, 2013. <http://www.toledoblade.com/Courts/2013/11/24/Death-penalty-cases-ebb-in-Lucas-County-and-Ohio.html>
  76. Johnson, Alan. *Columbus Dispatch*, "Former Justice Stratton says she's now opposed to death penalty." June 14, 2013. <http://www.dispatch.com/content/stories/local/2013/06/13/Former-Justice-Stratton-says-shes-against-death-penalty.html>
  77. Ohioans to Stop Executions, YouTube, "Voices of Experience." Last accessed March 30, 2015. [https://www.youtube.com/watch?v=wq08Q\\_we1UA](https://www.youtube.com/watch?v=wq08Q_we1UA)
  78. State v. Wogenstahl, 123 Ohio St. 3d 1437, 1437-1438 (2013).
  79. Wagner, Mike and Alan Johnson. *Columbus Dispatch*, "Timeout from death." August 10, 2010. <http://www.dispatch.com/content/stories/local/2010/08/08/timeout-from-death.html>

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