

## **RECENT OHIO DEATH PENALTY STUDIES**

### ***League of Women Voters of Ohio***

**Who:** The League of Women Voters of Ohio is a non-partisan political organization that encourages the informed and active participation of citizens in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Established in 1920, the state League supports 34 locally organized, volunteer-driven Leagues across Ohio. The League conducts research on state issues and, in cooperation with local Leagues, undertakes educational projects that provide information to citizens of the state. For more information, see <http://www.lwvohio.org>.

**When:** March 2005

**Process and scope:** The League study examined both the arguments in favor of and against the death penalty over an 18-month period, including deterrence, public opinion, victims' rights, fairness in the death penalty's application – including the impact of race, geography, and economic status, the role of DNA, cost, and the appeals process.

**Findings:** The League study noted evidence of racial bias, geographic disparity, violations of due process, and inequality in legal representation of defendants. The study did not find sufficient evidence that the death penalty is a deterrent.

As a result of the 18-month study, the League of Women Voters of Ohio concluded that Ohio's death penalty should be abolished. Members also voiced support for a statewide moratorium on the death penalty until a task force could study the issue.

In 2006, the National League of Women Voters took a similar position in favor of ending the death penalty, after several other statewide Leagues had conducted similar studies and reached similar conclusions.

The full report is available through the League of Women Voters of Cincinnati website:  
<http://www.lwvcincinnati.org/publications/DeathPenalty.html>.

### ***University of Cincinnati College of Law***

**Who:** The Urban Justice Institute at the University of Cincinnati College of Law was the precursor to the Ohio Innocence Project of the Rosenthal Institute for Justice. The Ohio Innocence Project identifies and assists Ohio inmates who are actually innocent and where new evidence can support an innocence claim. For more information see <http://www.law.uc.edu/clj>. The Institute established the Ohio Death Row Research Group to conduct the study.

**When:** January 2003. A final draft was published in the University of Cincinnati Law Review in the Summer of 2003.

**Process/Scope:** In 2002, the Illinois Commission on Capital Punishment released a two-year study of that state's death penalty, finding that there is significant risk of executing an innocent person and making 85 recommendations designed to reduce that risk.

The University of Cincinnati study was conducted to examine Ohio's death penalty in light of the Illinois recommendations. The study analyzed the case of each of Ohio's death row inmates to determine whether

risk factors found in Illinois were also present in Ohio. The study analyzed only those cases in which a death row inmate had completed their guaranteed Ohio Supreme Court appeal – 173 cases out of 204 death row inmates –and limited the scope of review to those facts contained in the Ohio Supreme Court’s opinion in order to ensure the most consistent review of each case.

**Findings:** The study found that the imposition of the death penalty in Ohio may be arbitrary, is not reserved for the most extreme cases, fails to provide all defendants with equal protection of the laws, and is likely to result in the execution of innocent people. The study further found that a moratorium on executions and a high-level commission to study the death penalty was necessary to maintain the integrity of the Ohio justice system.

Additional findings:

- Overall, 85 death row inmates out of 173 would not be eligible for the death penalty after applying the five eligibility factors of the Illinois Commission. These five factors were recommended by the Illinois Commission to ensure that the death penalty was reserved for only the most extreme cases, noting that a broader death penalty is prone to greater error.
- Excluding three additional cases where the inmate is mentally retarded, more than half of Ohio’s death row would be ineligible for the death penalty.
- Seventy-five of Ohio’s death row cases relied in some part on the testimony of in-custody informants, eyewitnesses, and accomplices – types of evidence determined by the Illinois commission as prone to errors.
- Of those cases that relied on error-prone testimony, 19 of them maintain their innocence.
- For three additional defendants, there is a serious question of whether they are mentally retarded.
- In total, 110 of 173 cases (63%) raise serious concerns that should be reexamined prior to the execution of these defendants.

The final report can be found at <http://www.law.uc.edu/cij/deathrow03.pdf>.

## ***Associated Press Investigative Series***

**Who:** Associated Press.

**When:** Three-part series ran May 7-9, 2005.<sup>1</sup>

**Process/Scope:** The Associated Press study was based on a two-year analysis of 1,936 capital indictments from 1981 through 2002.

**Findings:** Race, geography, and the extensive use of plea bargains all play a significant role in determining death sentencing in Ohio. Further, the death penalty is costly, placing a greater burden on smaller counties.

---

<sup>1</sup> Part 1: Andrew Welsh-Huggins, “Study Says Death Penalty is Applied Unequally,” May 7, 2005.

Part 2: Kate Roberts, “Small Counties Feel Pinch From Trials – Death Row Cases Can Tie Up Courts for Weeks, Months, Prosecutors Say Justice Overriding Concerns,” May 8, 2005.

Part 3: John Sewer, “Killers Commit Similar Crimes, But One is Executed, the Other is Not,” May 9, 2005.

- **Racial disparities:** Offenders whose victims were white were twice as likely to be sentenced to death as those whose victims were black.
- **Plea bargains:** About 50% of the indictments during the study period ended in a plea bargain. Of those cases, 131 people who pleaded guilty in exchange for escaping the death penalty were charged with killing multiple victims. Twenty-five had killed at least three victims. By contrast, 196 of the 274 people who were sentenced to death row during the same 21-year time span were convicted of killing a single victim.
- **Geographic disparities:** In Cuyahoga County, only eight percent of indictments resulted in death sentences, while 43% of cases received a death sentence in Hamilton County.
- **Costs County Tax Payers:** After a month-long trial and sentencing in May 2003 in Delaware County, prosecutors had to work through a backlog of 527 felony indictments. Vinton County's entire court system was shut down for three weeks during the death penalty trial of George McKnight.
- **County variations in defense costs:** Each county sets a different cap for the amount paid for defense attorneys ranging anywhere from \$3,000 to \$75,000:
  - Cuyahoga and Mahoning pay up to \$25,000
  - Hamilton County pays \$40,000
  - Franklin County pays \$50,000



9 E. Long Street ~ Suite 201  
 Columbus, Ohio 43215  
 614-560-0654 ~ [www.otse.org](http://www.otse.org)

## **UPCOMING OHIO DEATH PENALTY STUDY: AMERICAN BAR ASSOCIATION**

The American Bar Association (ABA) is currently conducting a study of Ohio's death penalty system. The study is expected to be released in Spring 2007.

The ABA is the national representative of the legal profession with over 400,000 members. The ABA has no position against the death penalty, but has expressed concern over the application of the system and in 1997 became the first national organization to call for a moratorium on executions while questions of fairness and accuracy were studied and addressed. The ABA launched the Death Penalty Moratorium Implementation Project in 2001.

The ABA is conducting similar assessments in 15 other states. Four have been released so far, in Alabama, Arizona, Florida, and Georgia. All of the studies released so far have found significant problems with the state's death penalty system and some have called for a moratorium on executions.

The Ohio assessment will be conducted by a team of ten Ohioans, including judges, legislators, law professors, and attorneys. A list of the assessment team members is below. The report will cover twelve key aspects of death penalty administration in Ohio:

- defense services,
- procedural restrictions and limitations on state post-conviction and federal habeas corpus, the preservation and testing of DNA evidence,
- law enforcement identification and interrogation procedures,
- crime laboratories and medical examiners,
- prosecutors,
- the direct appeal process;
- clemency proceedings, jury instructions,
- an independent judiciary,
- the treatment of racial and ethnic minorities,
- and mental retardation and mental illness.

**Ohio Assessment Team Members:**

**Professor Phyllis L. Crocker**, Chair of the Ohio Assessment Team, Professor and Associate Dean for Academic Affairs, Cleveland-Marshall College of Law at Cleveland State University

**Professor Mark Godsey**, Academic Director of the Ohio Innocence Project, University of Cincinnati College of Law

**Professor Margery Koosed**, Professor, University of Akron School of Law

**Mr. Geoffrey S. Mearns**, Dean and Professor, Cleveland-Marshall College of Law at Cleveland State University and former Assistant U.S. Attorney

**Judge Michael R. Merz**, Chief Magistrate Judge, United States District Court for the Southern District of Ohio

**Ms. S. Adele Shank**, private practice attorney, Columbus, Ohio

**Representative Shirley A. Smith**, State Congresswoman, 10th District of Ohio

**Mr. David C. Stebbins**, private practice attorney, Columbus, Ohio

**Representative Stephanie Tubbs Jones**, U.S. Congresswoman, 11th District of Ohio

**Judge Craig Wright**, Judge, Franklin County, Ohio Court of Common Pleas and former Justice, Ohio Supreme Court

For more information about the ABA study, reports released on other states, and the Ohio ABA Study Commission, see <http://www.abanet.org/moratorium>.



9 E. Long Street ~ Suite 201  
Columbus, Ohio 43215  
614-560-0654 ~ [www.otse.org](http://www.otse.org)

# MODEL: OHIO DEATH PENALTY STUDY IDEAS

## OHIOANS TO STOP EXECUTIONS

### 1. TASKS

a) The Commission is charged to study capital punishment in the State of Ohio and determine what policy recommendations, if any, would guarantee that, in its application and administration, capital punishment in Ohio is free from bias and error. To that end, the Commission shall, among other things, review

- (1) June 2001 Protocols of the American Bar Association Section of Individual Rights and Responsibilities;
- (2) Recommendations made by government commissions studying capital punishment in Illinois (2003) and Massachusetts (2004)
- (3) *Mandatory Justice: Eighteen Reforms to the Death Penalty*, a report of The Constitution Project's bipartisan, blue-ribbon commission of capital punishment supporters and opponents
- (4) New Jersey Death Penalty Study Commission report January 2007; and
- (5) Other non-partisan, academic, and/or government inquiries into the administration of capital punishment at state and national levels including Ohio-based studies such as the University of Cincinnati Law School.

b) The Commission shall review every stage of the capital process, including pre-trial procedures, jury selection, defense, prosecution, trial procedures, post-conviction appeals, and clemency procedures, and make findings and public policy recommendations in each of the following areas, including but not limited to:

- (1) The risk of innocent people being sentenced to death and/or executed; where cases of wrongful conviction (in capital cases or cases that resulted in long or life sentences) exist in the State of Ohio, the Commission shall also

look at the factors and characteristics of these cases and determine additional areas of study and/or policy change necessary;

(2) Whether the selection of defendants for capital trials is arbitrary, unfair, or discriminatory in any way, looking specifically at race, geography and socio-economic background and any other relevant characteristics of both defendants *and* victims, and whether there is unfair, arbitrary, or discriminatory variability in the sentencing phase or at any stage of the process; in determining the presence of unfair biases, the commission shall look not only at death penalty cases, but also death-eligible cases where the death penalty was not sought;

(3) Whether there is a significant difference in the crimes of those selected for the punishment of death as opposed to those who receive life in prison;

(4) What services exist in the State of Ohio for close family members and loved ones of murder victims, whether these services are sufficient, whether additional services are provided in other states, whether additional services should be provided in the State of Ohio, and whether victims rights and services are provided on an equal basis to all surviving family members regardless of their support for, opposition to, or neutrality on the death penalty; in addition, the Commission shall also examine the availability of services for family members who differ in their views on capital punishment;

(5) The cost of the death penalty system, taking into account all expenses from indictment to execution, as compared to the cost of life in prison; in considering the overall cost of the death penalty in, the cost of all the capital trials that result in life sentences as well as the death sentences that are reversed on appeal must be factored into the equation;

(6) What changes to the death penalty, if any, would ensure a system that is fairly administered and consistently applied, free from impermissible racial, ethnic, or geographic bias, and prevents the sentencing to death and execution of the innocent;

(7) Whether the law provides adequate protections for specific vulnerable populations such as the mentally retarded (in accordance with the United State Supreme Court ruling in *Atkins v. Virginia*) and the mentally ill;

(8) Whether the death penalty rationally serves a legitimate penological interest such as deterrence;

(9) Whether the death penalty is consistent with evolving standards of decency;

c). The commission shall propose new legislation, if appropriate.

d). The commission shall be composed of 15 members. Appointments should reflect the diversity of the population of Ohio. Members will be appointed as follows:

(1) Five members appointed by the Governor: two of whom shall represent a cross-section of the victims' community (one from primary victims' group in state which is not anti-death penalty and one from primary victims' group in state which is anti-death penalty, i.e. Murder Victims Families for Reconciliation, Murder Victims' Families for Human Rights, etc), two of whom shall be appointed from the religious/ethical community; and one representative of the general public;

(2) Two members appointed by the President of the Senate, one of who shall be a Republican, and one of who shall be a Democrat;

(3) Two members appointed by the Speaker of the House, one of who shall be a Republican, and one of who shall be a Democrat;

(4) A member of the judiciary, appointed by the Chief Judge of the State's highest court;

(5) The Public Defender or his or her designee;

(6) The Attorney General or his or her designee;

(7) The President of the State Bar Association or his or her designee; and

(8) A representative of the District Attorney's Association;

(9) A member of the NAACP or another civil rights organization.

e). Members shall be appointed within three months of enactment.

f). The Attorney General's office shall provide staffing for the work of the commission.

g). The members of the commission shall serve without compensation, but may be reimbursed for necessary expenses incurred in the performance of their duties, within the limits of funds appropriated or otherwise made available to the commission for its purposes.

h). The commission shall choose a chairperson from among its members.

- i). Any vacancy in the membership shall be filled in the same manner as the original appointment.
- j). The commission is entitled to the assistance and service of the employees of any State, county or municipal department, board, bureau, commission or agency as it may require and as may be available to it for its purposes, and to employ stenographic and clerical assistance and to incur traveling or other miscellaneous expenses as may be necessary in order to perform its duties, within the limits of funds appropriated or otherwise made available to it for its purposes.
- k). The commission may meet and hold hearings at the places it designates during the sessions or recesses of the Legislature.
- l). The commission shall report its findings and recommendations to the Governor and the Legislature no later than [date] (insert date 18-24 months from the date the act takes effect). The Governor and Legislature shall review the report within 90 days and consider any recommendations made by the Commission.
- m). Funds necessary for the functioning of the Commission shall be provided for in the state budget.

## **2. Moratorium on Executions**

During the pendency of the study, the state shall not carry out any executions. An individual who has been sentenced to death may not be executed prior to [date] (insert the last day of the legislative session following the session in which the report will be presented), and a judge may not issue a warrant of execution prior to [same date]. During the moratorium, the state may continue to seek and prosecute capital cases.



9 E. Long Street ~ Suite 201  
Columbus, Ohio 43215  
614-560-0654 ~ [www.otse.org](http://www.otse.org)

## **ORGANIZATIONS CALLING FOR A MORATORIUM ON EXECUTIONS IN OHIO**

1. City of Cincinnati
2. City of Dayton
3. City of Oberlin
4. Village of Yellow Springs
5. *Cleveland Plain Dealer* (Cleveland)
6. *Akron Beacon Journal*
7. IPI Publishers (Cleveland)
8. West Ohio Conference of United Methodist Church
9. Ohio Council of Churches (Columbus)
10. The Catholic Conference of Ohio
11. League of Women Voters of Ohio
12. NAACP, Ohio Conference of Branches
13. Cleveland Chapter of the National Lawyers Guild
14. Cuyahoga County Bar Association (Cleveland)
15. New Life United Methodist Church (Columbus)
16. Archdiocese of Cincinnati
17. Archdiocese of Cincinnati, Catholic Social Action Commission
18. Catholic Action Commission of Lorain County
19. Akron Area Association of Churches (Akron)
20. Akron Dominican Sisters, Leadership Council (Akron)
21. Annunciation Parish Community (Cleveland)
22. Ascension of our Lord Catholic Church (Cleveland)
23. American Civil Liberties Union of Ohio (Cleveland)
24. American Civil Liberties Union Cincinnati Working Group (Cincinnati)
25. American Friends Service Committee, Ohio Criminal Justice Program Cte. (Dayton)
26. American Poets Opposed to Executions (Columbus)
27. Amnesty International – Group 70 (Cleveland)
28. Amnesty International- Group 86 (Cincinnati)
29. Anawim Community (Cincinnati)
30. Audio Restoration Service (Cleveland)
31. Barberton-Norton Peace Studies Group (Akron)
32. Byzantine Nuns (St. Clare)
33. Cathedral of St John, Social Justice Committee (Cleveland)
34. Catholic Commission (Akron)
35. Central Southeast Association of the United Church of Christ (Columbus)
36. Center for Social Concern (University of Dayton)
37. Cincinnati Friends Meeting (Cincinnati)
38. Cincinnati Mennonite Fellowship
39. Citizens United for the Rehabilitation of Errants (CURE), Ohio (Columbus)
40. Cleveland Coalition Against the Death Penalty (Cleveland)
41. Cleveland Meeting of the Religious Society of Friends
42. Commission on Catholic Community Action (Cleveland)
43. Community Council of Dayton (Dayton)
44. Community Friends' Meeting (Cincinnati)
45. Congregation of Divine Providence
46. Dominican Sisters of Hope (Cincinnati)
47. Congregation Tifereth Israel (Columbus)

48. Consistory of Grace United Church of Christ of Loyal Oak (Norton)
49. Conventional Franciscan Commission on Justice, Peace, and the Safeguarding of Creation: Province of Our Lady of Consolation (Carey)
50. Cuyahoga Green Party
51. Dayton Monthly Meeting, Religious Society of Friends (Dayton)
52. Dominican Sisters, St. Mary of the Springs (Columbus)
53. Eastern Ohio Association of the United Church of Christ, Assoc. Council (Canton)
54. Faith Community Alliance of Greater Cincinnati
55. Families That Matter (Cincinnati)
56. *Fort Wayne Journal Gazette*
57. Franciscan Friars, Province of St. John the Baptist, JPIC Office (Cincinnati)
58. Franciscan Friars, Province of St. John the Baptist, Provincial Council (Cincinnati)
59. Grace United Methodist Church (Washington Court House)
60. Independent Chemical INC. (Cleveland)
61. Independent Publishers Inc. (Cleveland)
62. Industrial Workers of the World (IWW) General Defense Committee (Cincinnati)
63. Innocent Inmates Association of Ohio, Inc.
64. Intercommunity Justice and Peace Center (Cincinnati)
65. Interfaith Coalition to Stop Execution
66. Interfaith Justice and Peace Center (Toledo)
67. Justice Watch (Cincinnati)
68. Lafayette Christian Fellowship
69. Lorain County Coalition to Abolish the Death Penalty
70. Lutheran Metropolitan Ministry Social Justice Advocacy Task Force
71. Marianist Social Justice Collaborative
72. Missionaries of the Precious Blood, Dayton (Dayton)
73. Mount Auburn Presbyterian Church (Cincinnati)
74. MUSE Cincinnati's Women's Choir
75. National Shrine of Our Lady of Consolation (Carey)
76. Northwest Ohio Fellowship of Reconciliation (FOR) (Bluffton)
77. Ohioans to Stop Executions
78. Ohio Coalition to Abolish the Death Penalty (Cincinnati)
79. Ohio Conference of the Mennonite Church USA
80. Ohio Conference of the United Church of Christ
81. Ohio Sort Inc. (Berea)
82. Oxford Friends Meeting (Oxford)
83. Pax Christi Cleveland, West (Cleveland)
84. Pax Christi, Tiffin Area
85. Peace Community Church of Oberlin
86. The Post, Ohio University Student Paper (Athens)
87. Prison Policy Initiative (Cincinnati)
88. Project H.O.P.E. (Cleveland)
89. Restorative Justice Mission Group of Cleveland
90. Restorative Justice and Renaissance Group
91. Roman Catholic Diocese of Cleveland, Catholic Commission on Community Action (Cleveland)
92. Saint Ignatius Peace and Justice Committee (Cincinnati)
93. Scioto Peace and Justice Chapter of Fellowship of Reconciliation
94. St. Francis / St. Joseph Catholic Worker House (Cincinnati)
95. St. James the Less Catholic Church (Columbus)
96. St. John's Unitarian Church (Cincinnati)
97. St. Joseph Catholic Church (Strongsville)

98. St. Luke's Catholic Church (Beaver Creek)
99. Saint Paul African Methodist Episcopal Church (Cleveland)
100. St. Luke the Evangelist Catholic Parish (Beavercreek)
101. St. Philip Neri Catholic Church (Cleveland)
102. Sacred Heart Catholic Church, Peace and Justice Committee (Oberlin)
103. Sisters of Charity of St. Augustine, Social Concerns Committee (Richfield)
104. Sisters of Charity, Leadership Council (Cincinnati)
105. Sisters of Charity of Cincinnati (Cincinnati)
106. Sisters of the Humility of Mary, Leadership Team
107. Sisters of Mercy, Regional Community of Cincinnati (Cincinnati)
108. Sisters of Notre Dame of Toledo (Toledo)
109. Sisters of Notre Dame de Namur, Ohio Unit, The Justice and Peace Committee
110. Sisters of St. Francis of Sylvania (Sylvania)
111. Sisters of St. Francis, Tiffin (Tiffin)
112. Sisters of the Good Shepherd, Cincinnati Province, Leadership Team (Cincinnati)
113. Sisters of the Holy Cross (Cincinnati)
114. Sisters of the Precious Blood, Community Council (Dayton)
115. Social Justice and Peacemaking Committee of the Presbytery of Cincinnati
116. The Summit Mennonite Church (Barberton, OH)
117. Taylor Products Corp (Cleveland)
118. Toledo Coalition Against the Death Penalty
119. Unitarian Universalist Church of Kent, Ohio
120. United Church of Christ, National Office (Cleveland)
121. Ursuline Sisters of Youngstown, Leadership Team
122. Ursuline Sisters of Cleveland
123. The Ursulines of Cincinnati
124. Vandalia United Methodist Church, Administrative Board (Vandalia)
125. Vestry of Trinity Cathedral (Cleveland)
126. Western Reserve Association of the United Church of Christ (Cleveland)
127. Women for Racial and Economic Equality (Cleveland)
128. Women of Wonder (Cincinnati)
129. Women Speak Out for Peace and Justice / Cleveland Branch of the Women's International League for Peace and Freedom
130. Zion Mennonite Church (Archbold)
131. St. Anthony Church (Cincinnati)



9 E. Long Street ~ Suite 201  
 Columbus, Ohio 43215  
 614-560-0654 ~ [www.otse.org](http://www.otse.org)

## **A MORATORIUM CALL**

Across the nation, DNA testing and other new developments have revealed the stark inaccuracies and unfairness in the way the death penalty is working, driving down support for capital punishment. States and courts have responded to these concerns by commissioning studies, enacting reforms, suspending executions, and otherwise limiting the use of the death penalty.

There is no more final punishment than death – for this reason, the United States Supreme Court ruled long ago that death is different. It requires a level of care and scrutiny far beyond that expected of any other aspect of our nation’s criminal justice system. When a life is at stake, there is simply no room for error at any stage of the process.

An examination of Ohio’s death penalty is long overdue. While other studies have been conducted by independent entities over the years, they have all been piecemeal and without the weight of government scrutiny behind them. Only a comprehensive study – one that looks at all the issues from fairness and accuracy to the economic impact, deterrent value, impact on victims’ families, and other aspects of the system – will set Ohio on a better path in ensuring integrity in our criminal justice system.

Executions ought not move forward as long as such serious doubts remain. Executions make the death penalty about individual and often horrific crimes, raising the emotional tenor of the issue and preventing a reasoned and thoughtful consideration of what’s best for Ohio regarding its death penalty policies. Further, executions cannot be reversed if a study were to find errors in certain cases or other aspects of the system that ought to be remedied.

For these reasons, Ohio should suspend executions and commission a thorough and balanced study of our state’s death penalty.



9 E. Long Street ~ Suite 201  
Columbus, Ohio 43215  
614-560-0654 ~ [www.otse.org](http://www.otse.org)