

Final Days: Ohio's Collapsing Capital Punishment System

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Introduction

Ohioans to Stop Executions (OTSE) releases, "Final Days: Ohio's Collapsing Capital Punishment System," a report on the status of the 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: The Office of the Ohio Attorney General, the Ohio Supreme Court, the Supreme Court Joint Death Penalty Task Force on the Administration of Ohio's Death Penalty, the Ohio Department of Rehabilitation and Correction, the Office of the Ohio Public Defender, the National Registry of Exonerations, and reports by the news media.

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Executive Summary

Ohio has been unable to carry out executions since January 2014 despite numerous and far-reaching attempts to do so. In the wake of the execution of Dennis McGuire of Preble county in 2014, Ohio continues to change its execution protocol in an attempt to restart executions. Those attempts have failed.

A total of 18 new death penalty indictments were filed in 2016, a decrease by 30% compared to 26 that were filed in 2015. The majority of these new indictments leading to death penalty cases have not yet concluded. At the end of 2016, four cases had been resolved while 14 were pending.

Some higher use death penalty counties did not initiate new capital cases in 2016. Most notably are Hamilton, Lucas, Mahoning, Stark, Summit and Trumbull counties. Historically, these six counties have generated over 40% of all death sentences in Ohio under the current law.

What's become clear is that Ohioans are choosing sentences other than the death penalty as an appropriate punishment for death-eligible crimes. From 2012-2015, more than 70% of death penalty cases have resulted in life without parole or life-term sentences. Inmates serving life without parole (LWOP) sentences have increased from 283 in January 2010 to 587 in December 2016, more than doubling the LWOP population in Ohio prisons. The preferred sentencing option is clear.

Reforms Assessment & Legislation in Process

Ohio lawmakers have opportunities to address some of the most pressing deficiencies of the capital punishment system. Many of those deficiencies were highlighted by the Ohio Supreme Court's Death Penalty Task Force in its 2014 report. That report made 56 recommendations, some which can be implemented by the legislature and others requiring changes to Court rules.

The Ohio Supreme Court has yet to implement any of the 33 recommended reforms, while the Ohio General Assembly has implemented 8 of 23 recommendations. Those eight reforms became Ohio law through two bills, Substitute House Bill 663 (December 2014) and Senate Bill 139 (December 2016). Collectively, those bills implemented the following recommendations:

1. The legislature should study how best to support families of murder/homicide victims in the short and long term.
2. The time frame for filing post-conviction motion should be extended from one hundred eighty (180) days after the filing of the trial record to three hundred sixty five (365) days after the filing of the trial record.
3. 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 issues at hand.
4. In capital cases, jurors shall receive written copies of "court instructions" (the judge's entire oral charge) to consult while the court is instructing them and while conducting deliberations.
5. The judge hearing the post-conviction proceedings must state specifically why each claim was either denied or granted in the findings of fact and conclusions of law.
6. 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.
7. There shall be no page limits in post-conviction petitions for death penalty cases in either the petition filed with the common pleas court or an appeal from the denials of such petition.
8. Amend O.R.C. §2953.21, as attached to this final report in Appendix C, to provide for depositions and subpoenas during discovery in post-conviction relief.

The Ohio Senate's Criminal Justice Committee held seven hearings on a bill that would exclude individuals with serious mental illness from being subject to the death penalty. Senate Bill 162 was voted out of the committee in November 2016 by a vote of 9-1.¹ The full Senate never acted on the bill before the end of the

¹ 131st Ohio General Assembly, Ohio Senate. Senate Criminal Justice Committee, November 30, 2016. <https://www.legislature.ohio.gov/legislation/legislation-votes?id=GA131-SB-162>

legislative session in December, effectively killing the bill. This narrow bill would have exempted individuals from death if they had one of five diagnoses--schizophrenia disorder, schizoaffective disorder, bipolar disorder, delusional disorder and major depressive disorder. In total, the committee heard testimony from over a dozen proponents in favor of the bill and from just one opponent.

Exonerations in Ohio

Three men were exonerated from Ohio prisons in 2016, though they were not sentenced to death.² Laurese Glover, Eugene Johnson and Derrick Wheatt were wrongfully convicted for the 1995 murder of Clifton Hudson in Cleveland. The three newest exonerees were just boys--16, 17 and 17 respectively--at the time they were accused and wrongly convicted of the murder.

According to the National Registry of Exonerations, 59 Ohioans have been exonerated for crimes they did not commit. Though not all those exonerations were for the crime of murder, most were. Thirty-two, or 54% were exonerated after being convicted of murder.³ Fifty-six percent of those wrongful convictions were for aggravated murder and eligible for the death penalty. Sixteen exonerees had capital indictments filed against them and faced the death penalty for crimes they did not commit.⁴ Since 1975, nine Ohioans have been exonerated after receiving a sentence of death.⁵ These wrongful convictions highlight the danger and real risk that Ohio's criminal justice system routinely convicts innocent people.

Ohio legislators have opportunities to put protections in place that would address the problem of wrongful conviction. Over a dozen recommendations were made to the legislature by a Supreme Court Task Force in 2014. To date, none of those protections have been acted upon by state lawmakers. Those recommendations were⁶:

- Any in-custody interrogation shall be electronically recorded, or if not, statements are presumed involuntary.
- 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.
- 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

² Harper, John. *The Cleveland Plain Dealer*, "Judge dismisses murder case of three East Cleveland men convicted 20 years ago." August 15, 2016. http://www.cleveland.com/court-justice/index.ssf/2016/08/judge_dismisses_murder_case_of.html

³ The National Registry of Exonerations. Exonerations by State: Ohio. <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Ohio>

⁴ The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

⁵ Death Penalty Information Center. Innocence and the Death Penalty, Exonerations by State: Ohio. <http://www.deathpenaltyinfo.org/innocence-and-death-penalty#inn-st>

⁶ Joint Task Force to Review the Administration of Ohio's Death Penalty: Final Report and Recommendations. April 2014. <http://www.supremecourt.ohio.gov/Boards/deathPenalty/finalReport.pdf>

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.

- All crime labs in Ohio must be certified by a recognized agency defined by the Ohio legislature.
- Adopt the 2003 ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (and train counsel and judges on these).
- Enact and fund a capital litigation fund to pay for all costs, fees, and expenses.
- 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.
- 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.
- 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.
- Bar a death sentence where the state relies solely on jailhouse informant testimony that is not independently corroborated at the guilt/innocence phase.
- 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.
- 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.
- Require the prosecutor to present to the grand jury available exculpatory evidence of which the prosecutor is aware.

These reforms, if adopted, would address the leading factors contributing to wrongful conviction including mistaken witness identification, perjury or false accusation, official misconduct, false confessions, false or misleading forensic evidence and inadequate legal defense.

New Indictments

A total of 18 new death penalty indictments were filed in 2016,⁷ a 30% drop compared to indictments filed in 2015. The majority of these new indictments leading to death penalty cases have not yet concluded. At the end of 2016, four cases had been resolved while 14 were pending.

The new cases came from just ten counties. Nearly 28% of all new indictments came from Cuyahoga county alone, and 22% came from Butler county. Aside from Cuyahoga and Butler counties, the only county with more than one new indictment was Franklin county filing two. Collectively, these three counties account for 61% of the new indictments filed in 2016. This trend indicates that the capital indictment process is concentrated among few Ohio counties.

Seven counties filed one capital indictment in 2016. Those include Knox, Medina, Mercer, Montgomery, Portage, Putnam and Van Wert counties.⁸

Knox county filed its fifth capital indictment since 1981. The most recent other death penalty case initiated in Knox county was in 2011. Prosecutors offered a plea deal that resulted in a sentence of life without parole in the case of Matthew Hoffman.⁹ None of the previous death penalty cases from Knox county has resulted in a death sentence. The death penalty trial for Herschel Jones III was pending at the end of 2016. Mr. Jones is accused of murdering Danville Police Officer Thomas Cottrell on January 17, 2016.¹⁰

Medina county initiated a new death penalty case for the third time since 2010 and for the tenth time overall since 1981. The 2016 capital trial for James Tench resulted in a death sentence, the second ever from Medina County.¹¹ The only other death sentence from Medina county came in 2013 in the case of Steven Cepec whose indictment came three years prior in 2010.¹²

Mercer county filed one capital indictment in 2016 in a case against a man named Cory Eischen. Eischen is alleged to have killed a 4-year old child in September. The previous three death penalty cases in Mercer

⁷ The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

⁸ Ibid.

⁹ CNN Wire Staff. *CNN*, "Man gets life without parole in gruesome Ohio murders." January 7, 2011. <http://www.cnn.com/2011/CRIME/01/06/ohio.family.sentence/>

¹⁰ Smola, Jennifer. *The Columbus Dispatch*, "A year later, Danville still mourns slain officer." January 23, 2017. <http://www.dispatch.com/news/20170123/year-later-danville-still-mourns-slain-officer>

¹¹ Neely, Chanda. *The Cleveland Plain Dealer*, "Brunswick man sentenced to death for murdering his mother (video)." April 25, 2016. http://www.cleveland.com/medina/index.ssf/2016/04/brunswick_man_sentenced_to_dea.html

¹² The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

county resulted in a life without parole sentence in 2014, a 20-life sentence in 1993 and a 30-life sentence in the same year.¹³

Montgomery county filed one capital indictment in the case of Harvey Jones, the county's 34th overall under the current death penalty law.¹⁴ Although Montgomery county initiates death penalty cases somewhat frequently, the county has not sentenced a prisoner to death since 2006.¹⁵ The twelve most recent death cases in Montgomery county yielded life without parole sentences.¹⁶ If convicted and sentenced to death, Harvey Jones would be the sixth man from Montgomery county ever sentenced to death.

Portage county's 2016 capital indictment is its 25th since Ohio's current death penalty law went into effect.¹⁷ Portage county has sentenced a total of five men to death from 1981-2016, including Damantae Graham in 2016.¹⁸ One Portage man has been executed and three are currently on death row including Tyrone Noling, a man whose case raises serious doubts about guilt. Portage County has had issues with wrongful convictions in the past. Two men exonerated, Randy Resh and Bob Gondor, faced the death penalty there in 1990.¹⁹

Putnam county initiated a new death penalty case for the first time since 2001.²⁰ The death penalty case against Travis Soto is the county's fourth overall. The previous death cases in Putnam county have resulted in one death sentence that was later vacated, one sentence of 30-life and one life without parole.²¹

¹³ Ohio Department of Rehabilitation and Correction. Offender Search: Rhoades, Bryan L., Mercer County; Schulte, Gary, Mercer County; Fickert, Jerry D., Mercer County. <http://odrc.drc.ohio.gov/OffenderSearch/search.aspx>

¹⁴ The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

¹⁵ Office of the Ohio Public Defender. Appellate Services, Death Penalty Department, Current Residents. <http://opd.ohio.gov/Portals/0/PDF/DP/Current%20residents.pdf>

¹⁶ Cross-reference The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>
With Ohio Department of Rehabilitation and Correction. Offender Search <http://odrc.drc.ohio.gov/OffenderSearch/search.aspx>

¹⁷ The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

¹⁸ Office of the Ohio Public Defender. Appellate Services, Death Penalty Department, Current Residents. <http://opd.ohio.gov/Portals/0/PDF/DP/Current%20residents.pdf>

¹⁹ The National Registry of Exonerations. Exonerations by State: Ohio. <http://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Ohio>

²⁰ The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

²¹ Cross-reference The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>
with Ohio Department of Rehabilitation and Correction. Offender Search <http://odrc.drc.ohio.gov/OffenderSearch/search.aspx>

Van Wert county filed its sixth death penalty case in 35 years.²² Only one of the previous five cases resulted in a death sentence. Former Governor Ted Strickland commuted the death sentence of John Spirko in 2008.²³ In November 2016, Christopher Peters was charged with the murder of a 15-month-old child in Delphos.

Some higher-use death penalty counties did not initiate new capital cases in 2016. Most notably are Hamilton, Lucas, Mahoning, Stark, Summit and Trumbull counties. Historically, these six counties have generated over 40% of all death sentences in Ohio under the current law.²⁴ The lack of indictments in these six counties underscore the uneven application of Ohio’s death penalty law across county lines.

Table 1, Ohio counties filing capital indictments 2016

County	Indictments 1981-2016	Percentage of Total in Ohio	Death Sentences 1981-2016	Percentage of Total in Ohio
Butler	56	1.73%	10	3.04%
Cuyahoga	1260	38.85%	64	19.45%
Franklin	502	15.48%	20	6.08%
Knox	5	0.15%	1	0.30%
Medina	10	0.31%	2	0.61%
Mercer	4	0.12%	0	0
Montgomery	34	1.05%	10	3.04%
Portage	25	0.77%	5	1.52%
Putnam	4	0.12%	1	0.30%
Van Wert	6	0.19%	1	0.30%

²² The Supreme Court of Ohio. Capital Indictment Filings, Supreme Court of Ohio Capital Indictment Table 1981-2016. <http://www.supremecourt.ohio.gov/Clerk/capitalIndictment/default.asp>

²³ Office of the Ohio Attorney General Mike DeWine, Annual Capital Crimes Report 2016. March 31, 2017. <http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Capital-Crimes-Annual-Reports/2016-Capital-Crimes-Annual-Report>

²⁴ Ibid.

New Death Sentences

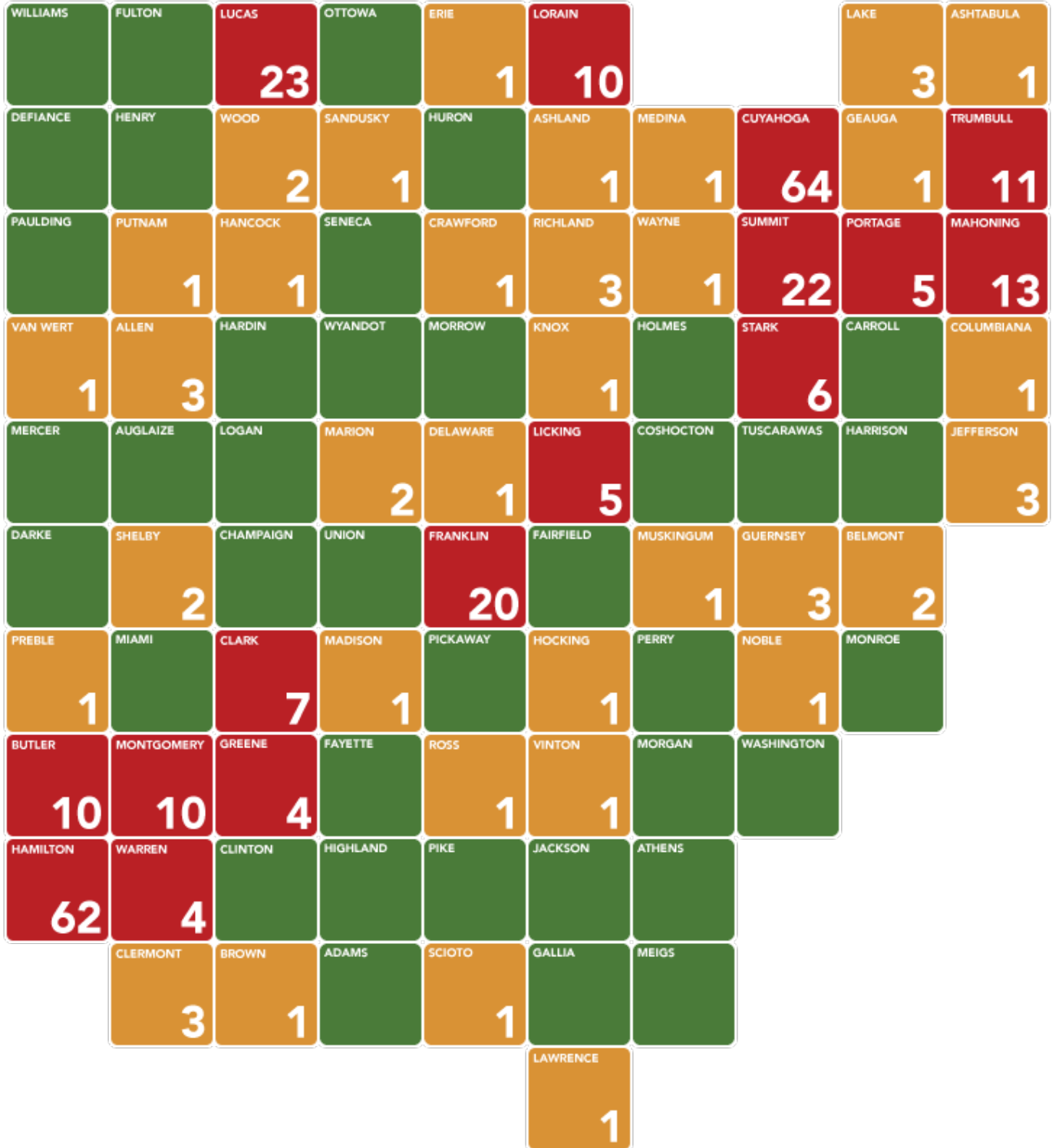
Four new death sentences were handed down in 2016. New death sentences came from Medina, Hamilton, Cuyahoga and Portage counties.²⁵ The death sentences from Hamilton and Cuyahoga counties were the 62nd and 64th respectively under the current death penalty statute. The sentences from Medina and Portage were the 2nd and 5th death sentences since 1981 in those counties.

Hamilton county's newest death sentence stemmed from a crime in March 2015 where 2-year old Glennara Bates was killed by her father Glen Bates. Cuyahoga county's death sentence was for Michael Madison, who killed three women, one in October 2012 and two in July 2013. Madison was arrested and charged in July 2013. Medina's second ever death sentence was given to James Tench for the murder of his mother, Mary Tench in November 2013. Portage county's new death sentence was given to Damantae Graham for the February 2016 murder of 18-year old Kent State University student Nicholas Massa in Akron. The four new death sentences averaged two years and four months from the time murders were committed to the sentence date.²⁶ Portage county was the shortest time period at 9 months and Cuyahoga county was the longest at 44 months.

²⁵ Office of the Ohio Attorney General Mike DeWine, Annual Capital Crimes Report 2016. March 31, 2017. <http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Capital-Crimes-Annual-Reports/2016-Capital-Crimes-Annual-Report>

²⁶ Cross-reference media reports with Office of the Ohio Public Defender. Appellate Services, Death Penalty Department, Current Residents. <http://opd.ohio.gov/Portals/0/PDF/DP/Current%20residents.pdf>

Population of Ohio Death Row by County



- No death sentences
- Death sentences below Ohio average of 3.625 per county
- Death sentences above Ohio average of 3.625 per county

Case Updates

Three men were removed from death row in 2016.²⁷ David Steffen was resentenced to life without parole in March for the 1982 murder of 19-year old Karen Range of Cincinnati. Steffen was convicted of rape and murder, though he maintained he never committed rape. In an unexpected twist, DNA evidence in 2008 proved that Steffen did not commit rape. Another man and former Hamilton county employee was charged with gross abuse of corpses while working for the county's morgue office between 1976 and 1992.²⁸ Steffen is the 23rd person removed from death row not by execution after being convicted in Hamilton county.²⁹

Anthony Apanovitch's 1985 death sentence for the murder of Mary Anne Flynn was vacated in February 2015. Since that time, an Ohio appeals court upheld the ruling overturning the death sentence but held that Apanovitch should remain in jail pending a new trial. Eventually Tony Apanovitch was released on bond, in May 2016,³⁰ and is currently under house arrest awaiting a new trial.

Apanovitch has maintained his innocence throughout the past 32 years. At the time the murder of Ms. Flynn was investigated, authorities collected DNA evidence that went untested for several years because the evidence was lost. In 1992 the evidence turned up in the desk of a Cuyahoga County Coroner employee.³¹ The state tested the evidence and said it inculpated (or included) Apanovitch as a match. After a series of appeals in federal court, defense attorneys learned that a second sample was in the possession of the state which excluded Apanovitch as the source.³² At the end of 2016, no re-trial date had been scheduled. Tony Apanovitch is the 38th person removed from death row not by execution convicted in Cuyahoga county.³³

Bennie Adams was resentenced to 20 years to life in June 2016 for the 1985 murder of Youngstown State University student Gina Tenney.³⁴ The Ohio Supreme Court upheld Adams' conviction, however it vacated the death sentence citing insufficient evidence of aggravated robbery. Adams maintains he is innocent of

²⁷ Office of the Ohio Attorney General Mike DeWine, *Annual Capital Crimes Report 2016*. March 31, 2017. <http://www.ohioattorneygeneral.gov/Files/Publications-Files/Publications-for-Law-Enforcement/Capital-Crimes-Annual-Reports/2016-Capital-Crimes-Annual-Report>

²⁸ Rhoden, Maya. *TIME Magazine*, "Ohio Morgue Worker Admits to Having Sex with 100 Corpses." August 18, 2014. <http://time.com/3135722/ohio-morgue-sex-kenneth-douglas/>

²⁹ Office of the Ohio Public Defender. Appellate Services, Death Penalty Department, Former Residents. <http://opd.ohio.gov/Portals/0/PDF/DP/Former%20residents.pdf>

³⁰ Ibid.

³¹ American Bar Association: Death Penalty Representation Project. "Crowell & Moring Wins Victory for Anthony Apanovitch" Vol. VIII Issue 2. Summer 2015. http://www.americanbar.org/publications/project_press/2015/summer/crowell-moring-wins-victory-for-anthony-apanovitch.html

³² Ibid.

³³ Office of the Ohio Public Defender. Appellate Services, Death Penalty Department, Former Residents. <http://opd.ohio.gov/Portals/0/PDF/DP/Former%20residents.pdf>

³⁴ Ibid.

killing Gina Tenney. Mr. Adams is the 8th person removed from death row not by execution after being convicted in Mahoning county.³⁵

Tyrone Noling was convicted of killing an elderly couple in Portage county in 1990, Bearnhardt and Cora Hartig. Though still on death row, in December, Tyrone won an important decision in the Ohio Supreme Court that granted him a post-conviction DNA testing appeal in the Ohio Supreme Court.³⁶ More background on the Noling case is below.

Tyrone Noling: A Case of Innocence³⁷

Tyrone Noling has been on death row since 1996 for the murders of Bearnhardt and Cora Hartig in rural Portage county. The tragic murders took place in April 1990 in the elderly couple's home. Noling has maintained his innocence for more than 20 years.

There are deeply troubling and significant questions that raise grave doubt about the conviction. Despite the fact that there is no physical evidence linking Tyrone Noling to the murders, and that the case against him has fallen apart, he remains on death row and at risk of execution.

In April 1990 when the Hartigs were murdered in their home, crime scene evidence suggested to investigators the attacker was known by the victims. The scene also suggested the attacker was looking for specific items. Jewelry, money and other valuables were not taken as would be expected in burglary crimes.

Investigators from the county sheriff's office excluded Tyrone Noling and three other boys as suspects. The investigation stalled for the next two years. In 1992, the Portage county prosecutor's office commandeered the case and assigned it to an investigator named Ron Craig.

Between 1992 and 1995, county prosecutors and investigators worked to build a case against Tyrone Noling and the boys, Butch Wolcott, Gary St. Clair and Joey Dalesandro. Investigator Craig told Wolcott, who was 14 years old at the time of the murders, they are pretty certain the boys were involved in a murder.

Craig told Wolcott, falsely, that a witness saw him and the boys commit the murders, that DNA evidence on a cigarette butt matched Wolcott, that a polygraph examination proved he was involved with the murders, and that Wolcott was involved with the murders but had repressed his memory of them. None of that was true according to court documents. Wolcott was told he would spend the rest of his life in prison if he did not cooperate.

In January 1996 the other boys, Gary St. Clair and Joey Dalesandro, were offered deals in exchange for cooperation in their testimony against Tyrone Noling. They were advised to cooperate by their defense

³⁵ Office of the Ohio Public Defender. Appellate Services, Death Penalty Department, Former Residents. <http://opd.ohio.gov/Portals/0/PDF/DP/Former%20residents.pdf>

³⁶ *State v. Noling*, Slip Opinion No. 2016-Ohio-8252.

³⁷ Tyrone Noling, Innocence on Death Row: A Case of Murder and Injustice in Portage County, Ohio. <http://www.tyronenoling.com>

attorneys, and they plead guilty. The boys' testimony revealed numerous inconsistencies at Noling's trial including that the Hartigs were tied up, that jewelry and money was stolen, and that the driveway where the crime occurred was gravel. None of these statements were true.

After Tyrone Noling was convicted and sentenced to death, all three witnesses recanted their confessions and said they lied about Tyrone's involvement. Each said they were threatened or fed information in a coercive interrogation technique by prosecutor's investigator.

Mark Godsey, the director of the Ohio Innocence Project said, "When you take a step back and look at the entire investigation, you see tunnel vision here on the part of police and prosecutors. They focused in on their suspects right away and tried to make all the pieces fit together to fit their theory of the case while ignoring other red flags including alternative suspects that weren't ultimately looked into in great depth."

Godsey also said, "The jury that convicted Tyrone doesn't know how the state's entire case has been eroded. The witnesses have recanted--and convincingly recanted. Evidence of alternative suspects has come forward. We now know that the witnesses had all the tell tale signs of false confession because the intense pressure put on them--the coercion, the feeding of information to the point where it even causes a psychologist to become concerned about the accuracy of statements."

Lawyers for Tyrone Noling have asked the Ohio Supreme Court to allow them access to DNA testing results already completed, for shell casings to be run through a federal database, and for a reputable lab to conduct DNA testing on evidence. A decision could come before the end of 2017.

For more information about the case of Tyrone Noling, visit www.tyronenoling.com

Pending Executions

At the conclusion of 2016, Ohio had 32 executions scheduled to take place from 2017 to 2021.³⁸ From 1999 to 2014 Ohio conducted 53 executions, and no executions since January 2014. Ohio's projected execution schedule forecasts a 60% increase in the number of sentences carried out. Put another way, Ohio is planning to execute almost one-quarter of its death row prisoners in the next five years alone.³⁹ At no time in Ohio's modern history of executing has there been so many executions scheduled.

Since 2011, a steady stream of legal problems has faced the state and the prisons department. Those legal issues ranged from the Department of Rehabilitation and Correction (DRC) not following its written rules for carrying out executions to an inability to acquire preferred execution drugs. The result of this drug shortage was that Ohio began experimenting with different combinations of drugs and hypothesizing that the outcomes would be legal and without incident. Ohio was one of the first states, in 2014, to use a drug called midazolam for executions despite clear evidence of problems using the drug in other states' executions. The troubling execution of Dennis McGuire in January 2014 used midazolam and hydromorphone. Despite accounts provided by witnesses who described the execution as "evil," "unsettling," "ghastly," and "inhumane"^{40 41} DRC concluded "McGuire did not experience any pain or distress."⁴²

DRC noted the testimony provided by its own medical expert, Dr. Mark Dershwitz, a board certified anesthesiologist at the University of Massachusetts in DRC's after action report. Shortly after DRC's report on the McGuire execution, Dr. Dershwitz terminated his role as an expert witness for DRC and the prison agency substantially increased the dosages of drugs for use in future executions.⁴³ Communications sent between DRC and Dershwitz revealed concerns about Ohio's executions dating back to 2009.⁴⁴

³⁸ Bischoff, Laura. *Dayton Daily News*, "Set to resume executions, Ohio hits legal snag," December 29, 2016 <http://www.daytondailynews.com/news/set-resume-executions-ohio-hits-legal-snag/LpHVPUY1FE1LPbg40I5EOO/>

³⁹ Ohio Department of Rehabilitation and Correction, Capital Punishment Information, Execution Schedule. <http://www.drc.ohio.gov/execution-schedule>

⁴⁰ Hummer, Lawrence. *The Guardian*, "I witnessed Ohio's execution of Dennis McGuire. What I saw was inhumane." January 22, 2014. <https://www.theguardian.com/commentisfree/2014/jan/22/ohio-mcguire-execution-untested-lethal-injection-inhumane>

⁴¹ Johnson, Alan. *The Columbus Dispatch*, "Inmate's death called 'horrific' under new, 2-drug execution." January 16, 2014. <http://www.dispatch.com/content/stories/local/2014/01/16/mcguire-execution.html>

⁴² 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>

⁴³ Holloway, Collin. *ExpertPages*, "Nationally Renowned Lethal Injection Expert Resigns Post." September 2, 2014. <https://blog.expertpages.com/expertwitness/nationally-renowned-lethal-injection-expert-resigns-post.htm>

⁴⁴ Crair, Ben. *New Republic*, "Exclusive Emails Show Ohio's Doubts About Lethal Injection: The state worried new drugs could make prisoners 'gasp' and 'hyperventilate'--and used them anyway." August 14, 2014. <https://newrepublic.com/article/119068/exclusive-emails-reveal-states-worries-about-problematic-execution>

Delays, Ten Changes in Seven Years

Since 2009 the Ohio Department of Rehabilitation and Correction has changed its execution protocol ten times--November 30, 2009; November 15, 2010; March 9, 2011; April 11, 2011; September 18, 2011; October 10, 2013; April 28, 2014; January 9, 2015; June 29, 2015; October 7, 2016. Each protocol change was either an outcome of a delay or the cause of a delay in conducting executions.

The first change took place on November 30, 2009, just two months after the failed execution attempt of Romell Broom in September. The mishap of Broom's attempted execution was clearly a factor in the decision to change the protocol, which stated, "every effort shall be made to anticipate and plan for foreseeable difficulties in establishing and maintaining intravenous (IV) lines."⁴⁵ The 2009 revision made Ohio the first state to change from a three-drug protocol to a one-drug dose of sodium thiopental.

Ohio's second execution protocol change was made in November 2010.⁴⁶ The impetus for this change seems to have been the May 2010 execution of Michael Bueke. Mr. Bueke's last words were the resuscitation of The Holy Rosary,⁴⁷ a 15-20 minute Catholic prayer consisting of eight parts. The updated November 2010 protocol gave permission to the warden to cut an inmate's last statement short. Three months later, Ohio changed the protocol again on March 9, 2011 this time to swap out sodium thiopental for pentobarbital as the new execution drug.

The March 2011 execution protocol was edited again on April 11, 2011.

The April 2011 protocol had to be rewritten after a federal court ruling in July 2011. The court held that "Ohio pays lip service to standards it then often ignores without valid reasons, sometimes with no physical ramifications and sometimes with what have been described as messy if not botched executions."⁴⁸ The Court also wrote, "It is the policy of the state of Ohio that the state follows its written execution protocol, except when it does not. This is nonsense."⁴⁹ This September 2011 rewrite included "an auxiliary team member" or a physician to advise the execution team, the production of an execution timeline and clause that stated, "...variations from the requirements of the policy directive may sometimes be necessary. Any member of the Execution Team who determines for any reason it is difficult, impractical, or impossible to strictly follow the procedures in this policy directive shall immediately report the same to the Warden or the Director."⁵⁰ In effect, the protocol concedes that even within the confines of the strictest protocol, changes may have to be made during an execution.

⁴⁵ Ohio Department of Rehabilitation and Correction, Lethal Injection Protocol, 01-COM-11, effective date November 30, 2009.

⁴⁶ Ohio Department of Rehabilitation and Correction, Lethal Injection Protocol, 01-COM-11, effective date November 15, 2010.

⁴⁷ *Columbus Monthly Magazine*, "Dispatch reporter has watched twenty men die." September 2016. <http://www.columbusmonthly.com/content/stories/2016/08/these-eyes-have-watched-twenty-men-die.html>

⁴⁸ Welsh-Huggins, Andrew. *The Columbus Dispatch*, "Judge delays execution, rips 'haphazard' process." July 9, 2011. <http://www.dispatch.com/content/stories/local/2011/07/09/judge-delays-execution-rips-haphazard-process.html>

⁴⁹ <http://www.dispatch.com/content/stories/local/2012/11/12/judge-praises-execution-policies.html>

⁵⁰ Ohio Department of Rehabilitation and Correction, Lethal Injection Protocol, 01-COM-11, effective dates November 30, 2009; November 15, 2010; March 9, 2011; April 11, 2011; September 18, 2011; October 10, 2013.

The April 2011 protocol was rewritten on September 18, 2011 so that the IV insertion occurred in the execution chamber with closed circuit camera recording. Under this new revision, the warden was to accompany the execution team to confirm IV insertion went smoothly and the IV sites were undisturbed.

Ohio was able to keep the September 2011 execution protocol in place for just over two years until October 10, 2013 when it changed the process again. Media reports show that Ohio deviated from the protocol during the November 2011 execution of Reginald Brooks. The Cleveland Plain Dealer captioned as, "Federal judge halts executions, blasts state for not following rules."⁵¹

Because of the deviations, significant changes were made in October 2013 including adding a drug administrator, an execution timeline, and medical team member. This new process also put more enumerated procedures in parts of the protocol covering "Execution Preparation" at designated time periods leading up to executions. The other significant changes were the addition of a "medical team member" and the back up drugs midazolam and hydromorphone could be used if the primary drug (pentobarbital) was not available.

During the first use of the new execution protocol, DRC used the back up drugs midazolam and hydromorphone to execute Dennis McGuire on January 16, 2014. Media and witness accounts described this execution was "evil," "unsettling," "ghastly," and "inhumane."⁵² Witnesses observed McGuire repeatedly choked and gasped for air for approximately 26 minutes. In the aftermath, the prison department conducted an after-action investigation and issued an 8-page report in April 2014 that found nothing unusual about the McGuire execution. Despite no irregularities reported by DRC, it changed its protocol again on April 28, 2014 and increased the dosages of the drugs from 10 mg of midazolam to 50 mg of midazolam and 40 mg of hydromorphone to 50 mg of hydromorphone.

After the McGuire execution, the state of Ohio went to fairly significant trouble to be able to acquire execution drugs, as detailed below. All the attempts to acquire execution drugs took place as Ohio again kept changing its execution protocol.

On January 9, 2015 Ohio changed its execution drugs again. This time Ohio decided to go back to a similar execution drug protocol used in years past. DRC's first drug of choice was a single dose of pentobarbital-- whether it comes by being compounded or not. The second drug of choice was a single dose of sodium thiopental, supplied by a manufacturer of compounding pharmacy, and was last used in 2011. At this point the prisons department had removed the problematic drug combination of midazolam and hydromorphone. For the next six months, presumably, DRC could not acquire either pentobarbital or sodium thiopental. On June 29, 2015 DRC made its ninth change to the execution protocol since 2009.

⁵¹ Associated Press. *The Cleveland Plain Dealer*, "Federal judge halts Charles Lorraine's execution, blasts state for not following rules." January 11, 2012. http://blog.cleveland.com/metro/2012/01/federal_judge_halts_killers_oh.html

⁵² See footnotes 42 and 43.

The new protocol changes where execution drugs are stored from “in the infirmary” to “in a secured location.” It also adds information about how compounded drugs are to be tested and handled if those are to be used.

On October 7, 2016 Ohio changed the protocol for the tenth time and went from pentobarbital or sodium thiopental to a three drug cocktail of midazolam, one of three possible bromides (vecuronium, pancuronium or rocuronim) and potassium chloride. The re-introduction of midazolam is curious in that the dosages differ. Last time Ohio used midazolam its protocol called for 50 mg, but the current protocol calls for 500 mg of midazolam. This most recent change is likely the result of DRC not being able to acquire its drugs of choice, pentobarbital or sodium thiopental.

The current execution protocol was being litigated at the end of 2016. In December a federal magistrate ruled the October 2016 protocol was unconstitutional. The result of this ruling was two fold. In the short-term, Governor John Kasich issued yet another round of reprieves to death row inmates whose executions were scheduled to begin in January 2017. In the longer-term, the ruling has been appealed by higher federal courts. The outcome has yet to be determined.

DRC goes to extraordinary lengths to try to get the drugs it wants

Over the past three years, the Ohio Department of Rehabilitation and Correction (DRC) has gone to extraordinary lengths to attempt to resume executions. DRC hired outside legal counsel to circumvent federal regulations to acquire drugs for execution. DRC has also applied for and obtained a license to import drugs from manufacturers. Despite warnings from federal agencies, DRC contends that under certain circumstances, it should be allowed to import drugs for execution.

In general, DRC has had difficulty acquiring drugs for execution for two main reasons. First, any drugs that DRC wishes to use during an execution were developed through a formal application process, clinical trials and demanding manufacturing standards. This process is outlined under the federal Food, Drug & Cosmetic Act (21 U.S.C. § 321(p)) and Ohio Revised Code § 3715.01(9)(a). Part of this process includes proper labeling for use under the conditions prescribed, recommended, or suggested. No pharmaceutical company has ever developed a drug for the express purpose of ending life.

Second, because drug manufacturers have put certain drugs off limits for use in executions--execution not being the purpose of the drug--DRC and other state prison departments have sought drugs from compounding pharmacies. These compounding facilities mix specialized versions of drugs when patients have allergies or other conditions requiring slight modifications. However, compounding pharmacies may not legally manufacture, sell, deliver, hold, or offer for sale any drugs used for execution because those drugs would be "adulterated or misbranded" under 21 U.S.C. § 331 and Ohio state law, ORC § 3715.52(A) (1).

The timeline below shows some efforts made by Ohio to acquire drugs for execution and some delays in the course of that endeavor.

2014

April 2014: *The Columbus Dispatch* reported Ohio Dept. of Rehab. and Correction (ODRC) to change execution protocol. ODRC to increase dosages of drugs used in McGuire execution.

October 2014: Due to judicial moratorium extension in August 2014, Ohio Attorney General announced Ohio would not be able to have death penalty unless General Assembly adopts new secrecy law that shields identity of drug providers.

February 2015: FDAImports.com LLC was paid \$9,240 by ODRC for "Legal Services."

December 2014: General Assembly passes execution secrecy law.

May 2014: US District judge issued order placing moratorium on Ohio executions until August 2014. Execution dates are moved.

November 2014: Ohio House member introduced execution secrecy bill.

January 2015: ODRC announced Ohio to change executions drugs to sodium thiopental and pentobarbital.

November 2014: ODRC applied for drug import license from US Drug Enforcement Agency (DEA) for the prison where executions are carried out.

November 2014: ODRC hired private counsel to find way around US Food and Drug Administration (FDA), current law and federal court ruling in order to import execution drugs from overseas.

FDAImports.com LLC was hired acquire drugs. ODRC made payment of \$7,560 to FDAImports.com LLC.

October 2015: ODRC responds to June FDA letter and says, "Ohio has no intention of breaking any federal laws or violating any court orders" but argued "there is a legal framework for a state, if it so chooses, to import sodium thiopental in accordance with [the laws and court order]." The letter proposed that if five conditions are met, then a 2012 court order would not apply to such importation of sodium thiopental and, as such, it should be allowed.

October 2016: According to *The Associated Press*, ODRC acquired 850 vials of midazolam. ODRC now had enough of the drug for 40 executions.

July 2015: *The Associated Press* reported that ODRC successfully obtained a drug import license from the DEA. The *Associated Press* pointed out the actual importing of drugs is a separate process governed by the FDA.

October 2015: ODRC announced all 2016 executions would be delayed until 2017. Cited difficulty acquiring execution drugs.

October 2016: ODRC changed execution protocol to 3-drug mix of midazolam, rocuronium bromide and potassium chloride.

June 2015: FDAImports.com LLC director received letter from FDA saying, it has "come to [the FDA's] attention that the firm has inquired about the status of sodium thiopental." The FDA letter stated "There is no FDA approved application for sodium thiopental, and it is illegal to import an unapproved new drug into the United States."

The FDA sent a letter to ODRC director saying, "information received" by the FDA that Ohio "intends to obtain...sodium thiopental."

September 2016: According to *The Associated Press*, ODRC acquired 750 vials of midazolam, 230 vials of rocuronium bromide, and 174 vials of potassium chloride.

May 2016: Drug maker Pfizer announced it would block use of any of its drugs in executions. Statement released by company said, "Pfizer makes its products to enhance and save lives of the patients we serve," and it "strongly objects to the use of its products as lethal injections for capital punishment."

June 2015: ODRC paid FDAImports.com LLC another \$7,350. "Legal fees" paid to FDAImports.com LLC total more than \$33,000 according to the Ohio Treasurer's Office.

December 2016: a federal court ruled Ohio's execution protocol is unconstitutional; executions that were to resume in January 2017 were put on hold.

Conservatives Concerned

Conservatives across Ohio increasingly recognize the fundamental problems of Ohio's death penalty system. Generally, conservatives have raised concerns about the enormous costs associated with death cases, the fact that Ohio continues to sentence individuals with serious mental illness to death, and the unacceptable reality that innocent people are on death row today awaiting execution for crimes they did not commit. The following editorials reveal some of the most pressing concerns of Ohio conservatives.

THE PLAIN DEALER



Bob Taft: Ohio legislators should enact proposed death-penalty reforms

When I ran for governor in 1998, I hadn't given a great deal of thought to the duty I would be assuming to review clemency requests in death penalty cases. I campaigned on education, job creation and environmental issues.

However, as Governor I spent a lot of time reviewing the clemency cases that came before me. The death penalty is irreversible, and I wanted to make certain there was no question about guilt and no procedural errors.

At the time, the death penalty was an option I supported because it was pursuant to laws that had been enacted by the elected representatives of the people of Ohio. However, after reflecting on the cases I reviewed and the recommendations of the Ohio Supreme Court task force on the death penalty, I have come to have serious reservations about the effectiveness and necessity of capital punishment in most cases where it has been applied.

My first concern is that Ohio law allows the execution of individuals with serious mental illness. I believe this practice is not humane based on current standards of decency and the opinions of mental health experts across Ohio. Senate Bill 162 would end this practice, and I urge state legislators to enact it at the earliest possible date.

The legislature should also act to eliminate felony murders from the category of offenses to which the death sentence can be applied. These are murders in combination with other crimes often where murder was not the original intent, such as kidnapping, rape, aggravated arson, aggravated robbery, and aggravated burglary.

Felony murder cases have accounted for the vast majority of death cases in Ohio, and they are a major cause of the substantial racial and geographic disparities in the use of capital punishment, casting doubt about whether our criminal justice system is providing "equal protection under the laws." Fewer than 7 percent of felony murder cases result in a death sentence, which raises the issue of whether they are part of a "plea bargaining" strategy pursued by prosecutors.

The Supreme Court Task Force on the Administration of Ohio's Death Penalty was comprised of judges, prosecutors, defense attorneys, legislators, and legal experts. It completed its work in 2014 after a careful examination of Ohio's death penalty process; the two reforms I am endorsing are part of their recommendations.

Now is the time for the Ohio General Assembly to enact these reforms into law.

Jim Petro: Death Penalty is in decline, but problems remain

As Ohio attorney general, I oversaw 18 executions in accordance with Ohio law. As a state legislator before that, I helped write Ohio's current death-penalty law. We thought maybe it would be a deterrent. Maybe the death penalty would provide cost savings to Ohio. What I know now is that we were wrong. What I am coming to understand is just how wrong we were, and what needs to be done to fix our mistake.

My direct experience with executions makes me more than a mere spectator as Ohio continues to struggle with capital punishment. Since I left office in 2007, I've been following developments and watching those most deeply engaged with it.

Earlier this week, Ohioans to Stop Executions (OTSE) released its third report in as many years, providing perspectives on the status of Ohio's death penalty. I am in agreement with the report, "A Relic of the Past: Ohio's Dwindling Death Penalty," which details a continuing decline in executions and new death sentences in Ohio while highlighting the disparities between counties that prosecute death cases.

In 2015, only one new death sentence was handed down. Cuyahoga and Summit counties, two jurisdictions responsible for more than 25 percent of death sentences, initiated zero new death penalty cases last year. In fact, new death sentences overall were down for the fourth year in a row. There were three in 2014, four in 2013, and five in 2012.

It has become clear to me that what matters most is the personal predilections of a county prosecutor. Consider Cuyahoga County, which until 2012 was seeking the death penalty in dozens of cases a year. Last year Cuyahoga County sought none. Crime rates did not plunge. There was a new prosecutor.

On the other hand, consider Trumbull County, with one of the lowest homicide rates of Ohio counties which sentence people to death. Trumbull County leads the state with the highest death-sentence-per-homicide rate. Why? Again, the personal preference of the county prosecutor matters most.

The new OTSE report addresses many other issues, including 13 wrongful convictions and exonerations in Ohio death cases. After serving as attorney general, my chief concern was that our state has sentenced individuals to death or lengthy prison sentences for crimes they did not commit. The National Registry of Exonerations reports that 26 Ohioans were found guilty of murders they did not commit between 1975 and 2015. Half of these wrongfully convicted individuals - 13 of 26 - faced the death penalty, including Clarence Elkins, a man whose claim of innocence gained my support when I was attorney general.

Most urgently in my view, the new report catalogs the reluctance of Ohio legislators to consider most of the 56 recommendations made in 2014 by the Supreme Court Joint Task Force on the Administration of Ohio's Death Penalty. The charge to that task force was to find ways to make Ohio's death penalty more fair and accurate.

Only a handful of the recommendations have been considered, and not those which would make the biggest difference. For example, the recommendation to narrow the felony murder rule would address much of Ohio's disparity in death sentencing. Thirteen of the recommendations, individually and collectively, would go a long way toward preventing wrongful convictions. In failing to act, legislators effectively maintain the status quo, which is a broken system that currently serves only the interest of Ohio prosecutors. That is a grave mistake.

Another grave mistake is the terrible suggestion by the director of the Ohio Prosecuting Attorneys Association that Ohio adopt the gas chamber to conduct executions. I hope Gov. John Kasich and all Ohio legislators soundly reject that notion. It is offensive to the human experience and has no place in our great state.

I am convinced that the death penalty is just not worth it any more, and I don't think it can be fixed. Starting in January 2017, 28 Ohioans have execution dates. If we're going to have the death penalty, then it must not be carried out until the legislature implements the task force's reforms intended to ensure fairness and accuracy.



Terry Collins: Death Penalty isn't worth fixing

It's been six years since I retired after more than three decades at the Ohio Department of Rehabilitation and Correction. I held various positions including warden, regional director, assistant director and then director. Included in my responsibilities was the participation in the execution of 33 men from 2001 to 2010.

With each execution I asked myself: Did the extensive process of appeals ensure we got it right? I often wondered if we made a mistake. My curiosity arose because I had walked people out of prison after years of incarceration who turned out to be innocent.

Our judicial and corrections system is among the finest in the world and the envy of nations. We provide the best attorneys, judges, and corrections personnel anywhere. I know, and have worked closely with many of them. Yet we continue to be one of the few industrialized nations to carry out the death penalty even when we know mistakes happen.

Innocent People on Death Row

Every year, more innocent prisoners walk off death rows in the U.S. -- 156 since 1972. These troubling trends tell us this is no anomaly. Ohio has executed 53 and exonerated nine men. I think about these statistics and am troubled by Ohio's track record. Why? Because I'll always remember Gary Beeman, Ohio's first death row exoneree, who walked out of prison to a new trial and freedom. Turns out Gary didn't commit the crime that sent him to Death Row.

My concerns are not limited to the possibility of killing an innocent person. The death penalty is expensive, inefficient and takes far too long. I believe it only prolongs the pain and healing process for victims' families.

As one who values fairness and equality as the bedrock of our legal system, I do not accept the argument that we only execute the worst of the worst. The offenders in our prisons I encountered who committed unimaginable crimes were usually not on Death Row. The vast majority of those on Death Row were convicted under Ohio's felony murder rule, for killing someone in process of another crime such as robbery or kidnapping.

Failed Public Policy

A [recently released study](#) examined Ohio's 53 executions. This study found that the race of the victim and the county where the crime took place matter more than the severity of the crime. I think these disparities are important points of discussion regarding the use of the death penalty in Ohio.

I am not alone among corrections professionals who consider the death penalty a failed public policy. My predecessor, former ODRC Director Dr. Reginald Wilkinson, also opposes executions. We've joined with other former corrections officials across our great nation asking legislators to end the death penalty. After being quoted in my local paper in Chillicothe about my concerns with capital punishment, I received calls from former colleagues thanking me for saying out loud what they could not.

My concerns about the death penalty led me to join [Public Safety Officials on the Death Penalty](#). Public Safety Officials on the Death Penalty is an independent group of law enforcement officers, prosecutors, and corrections officials. We're ready to discuss concerns we share about the death penalty in this country so that policymakers may explore alternatives. Some of us oppose the death penalty while others support it under certain circumstances. We all recognize problems with the current death penalty, particularly that it diverts needed resources from policing and community safety.

Terry Collins: Death Penalty isn't worth fixing (continued)

A Better Alternative

I am pleased to stand with former Ohio Attorney General Jim Petro, another member of Public Safety Officials on the Death Penalty. He helped write Ohio's death penalty law as a legislator and saw 18 executions as Ohio's chief prosecutor. Jim and I join a majority of Ohioans who believe the current sentencing alternative of life without parole keeps Ohio communities safe. The sentence of life without parole is effectively severe and holds offenders accountable. Over 540 inmates are currently in custody of the Department of Correction with sentences of life without parole.

It is time for state officials to have serious and thoughtful conversations about whether Ohio's death penalty remains necessary. A recent task force appointed by the Ohio Supreme Court made 56 recommendations to fix problems with the fairness and accuracy of Ohio's system.

My experience tells me the death penalty isn't worth fixing. Our justice system will be more fair and effective without the death penalty.

Outcomes Show Death Penalty Unlikely

Death penalty trials and proceedings are onerous. Every aspect from attorney qualifications and jury selection to proceeding with two distinct trial phases requires resources far beyond non-death penalty cases. Given the required resources and duration of capital trials, it is imperative to assess the outcomes of death penalty cases and ask *is death worth it?*

All Ohio death penalty cases begin with a capital indictment. Once a prosecutor decides to seek the death penalty, resources are committed to a process that more commonly results in a sentence other than death.

In 2016, Ohio prosecutors initiated 18 new death penalty cases. By the end of 2016, only four cases had reached a conclusion. Those outcomes were two death sentences and two life without parole sentences. Although it is impossible to know what the outcomes of those 14 pending cases will be, looking to the past may provide some perspective.

Between 2012 and 2015, Ohio prosecutors sought the death penalty in 122 cases according to the Ohio Supreme Court's Capital Indictment Table. The most probable result of Ohio death penalty cases is not death, rather it is life without parole and life-term sentences. While death penalty cases from this time period produced nine new death sentences, most cases concluded with alternative sentences. In fact, more than 39% of cases resulted in sentences of life without parole, while just under 32% resulted in sentences ranging from 60-years to life to 15-years to life. Ohio judges and juries have issued alternative sentences in more than 71% of death-eligible cases. With approximately 9% of these cases still pending, it is extremely unlikely these percentages will change significantly. More than ever before, Ohioans are choosing something other than the death penalty as an appropriate punishment for these worst-of-the-worst crimes.

These outcomes from 2012-2015 can be interpreted in a few ways. One, these statistics underscore public opinion trends that Ohioans are weary of the death penalty. Two, Ohio prosecutors are inappropriately overusing the death penalty process to secure plea deals.⁵³ Or three, Ohio prosecutors are less effective at securing death verdicts than in the past. Finally, it is possible that these outcomes are a product of a combination of all three factors.

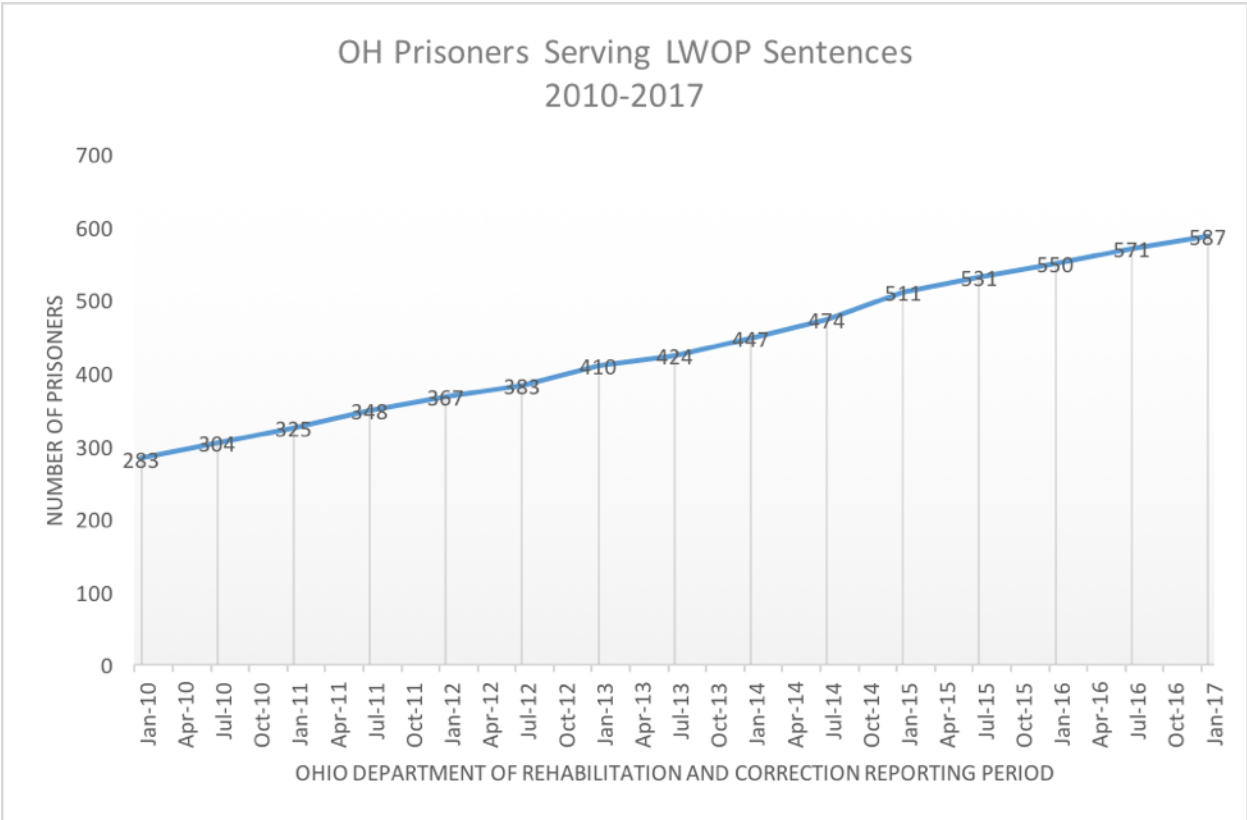
⁵³ Welsh-Huggins, Andrew. *The Associated Press* via *cnsnews.com*, "Death as bargaining chip? Ohio prosecutor slammed." May 16, 2012. <http://www.cnsnews.com/news/article/death-bargaining-chip-ohio-prosecutor-slammed>

Table 2, Sentencing outcomes of capital indictments 2012-2015

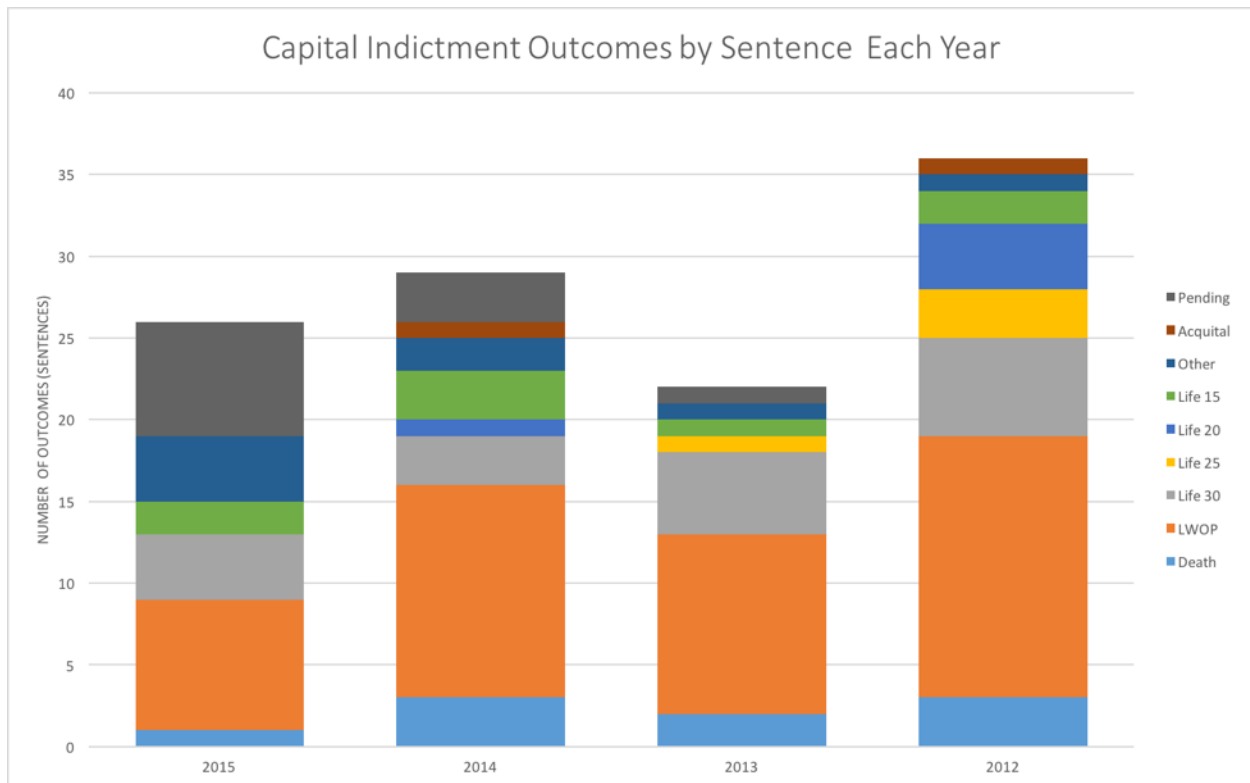
Sentence	2015	2014	2013	2012
Death	1	3	2	3
LWOP	8	13	11	16
60 to Life	0	1	0	0
50 to Life	1	0	0	0
30 to Life	4	3	5	6
25 to Life	0	0	1	3
20 to Life	0	1	0	4
15 to Life	2	3	1	2
Plea/Acquittal	1	1	0	2
Other	0	1	1	0
Pending	7	3	1	0
Totals	24	29	22	36

THE GRAPH ABOVE SHOWS THAT FROM 2012-2015, 71% OF OHIO DEATH PENALTY CASES RESULTED IN ALTERNATIVE SENTENCES. THOSE ALTERNATIVE SENTENCES WERE FOR LIFE WITHOUT PAROLE (39%) AND RANGED FROM 60-YEARS TO LIFE TO 15-YEARS TO LIFE (32%). ONLY 7.3% OF COMPLETED CASES RESULTED IN DEATH SENTENCES.

THE "PLEA/ACQUITTAL" STATISTICS INCLUDE REDUCED CHARGES OF INVOLUNTARY MANSLAUGHTER (18 YEAR SENTENCE) AND FIRST DEGREE MISDEMEANOR OBSTRUCTION OF OFFICIAL BUSINESS. THE "OTHER" STATISTICS INCLUDE A 17-YEAR SENTENCE AND A 12-YEAR SENTENCE.



SOURCE: OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, MONTHLY FACT SHEETS. JANUARY 2010-JANUARY 2017. [HTTP://WWW.DRC.OHIO.GOV/MONTHLY-FACT-SHEETS](http://www.drc.ohio.gov/monthly-fact-sheets)



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Conclusion

Ohio, like other death penalty jurisdictions, continues to find it cannot fairly or accurately administer the death penalty. Today, Ohio's capital punishment system is mired in wrongful convictions, uneven application based on county geography, sentencing outcomes that indicate Ohioans no longer prefer death sentences, and no viable way of carrying out executions.

Since 2014, Ohio legislators have had the opportunity to reform the death penalty system by addressing flaws identified by the Supreme Court Death Penalty Task Force. The legislature has demonstrated little ability to recognize the value of these reforms. Instead of making long-overdue changes, state leaders continue to kick the can down the road.

Ohio's death penalty system needs to come to an end. Thirty-seven years of administration of such a flawed public policy is more than enough. The real question Ohio leaders should address is *how many more years will Ohioans tolerate the enormous costs, the bias, and the risk of executing innocent people?* Ohio can make its criminal justice system better for victims' families, its law enforcement agencies, its courts and its citizens by removing the ultimate penalty.