

**IN THE SUPREME COURT OF OHIO**

<b>STATE OF OHIO</b>	)	Case No: 07-2021
Appellee	)	
vs.	)	Appeal taken from
	)	Hamilton County
<b>LAMONT HUNTER</b>	)	Court of Common Pleas
Appellant	)	Case No. B-0600596
	)	
	)	

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**MERIT BRIEF OF APPELLANT LAMONT HUNTER**

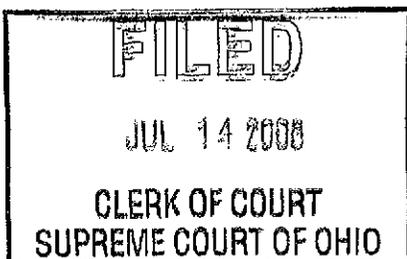
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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....iv

STATEMENT OF THE CASE AND FACTS.....1

PROPOSITION OF LAW NO. 1.....11

A DEFENDANT-APPELLANT IS ENTITLED TO THE EFFECTIVE  
ASSISTANCE OF COUNSEL IN A CAPITAL  
CASE.....11

PROPOSITION OF LAW NO. 2.....21

PRIVATELY-RETAINED COUNSEL IN A CAPITAL CASE WHO IS NOT  
CERTIFIED TO REPRESENT CAPITAL DEFENDANTS PURSUANT TO  
OHIO SUP. R. 20 IS PRESUMED TO PROVIDE INEFFECTIVE  
ASSISTANCE OF COUNSEL IN VIOLATION OF THE DEFENDANT’S  
FEDERAL AND STATE CONSTITUTIONAL RIGHTS. U.S. CONST.  
AMEND, VI, OHIO CONST. ART. 1 §  
10.....21

PROPOSITION OF LAW NO. 3.....22

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE WHEN HE  
DID NOT FOLLOW THROUGH WITH EXPERT TESTIMONY IN THE  
MITIGATION PHASE OF THE TRIAL, THEREBY VIOLATING THE  
FEDERAL AND STATE CONSTITUTIONAL RIGHTS OF THE ACCUSED.  
U.S. CONST. AMEND VI, OHIO CONST. ART. 1 §  
10.....22

PROPOSITION OF LAW NO. 4.....23

ADMISSION OF OTHER-ACTS EVIDENCE REGARDING PAST INJURIES  
TO THE VICTIM IS AN ABUSE OF DISCRETION AND A DENIAL OF THE  
RIGHT TO DUE PROCESS UNDER BOTH THE FEDERAL AND STATE  
CONSTITUTIONS. R. EVID. 404 (B), U.S. CONST. AMEND. V, OHIO  
CONST. ART. I §  
10.....23

PROPOSITION OF LAW NO. 5.....24

OHIO’S DEATH PENALTY LAW IS UNCONSTITUTIONAL. OHIO REV. CODE ANN. §§ 2903.01, 2929.02, 2929.021, 2929.022, 2929.023, 2929.03, 2929.04, AND 2929.05 DO NOT MEET THE PRESCRIBED CONSTITUTIONAL REQUIREMENTS AND ARE NCONSTITUTIONAL. U.S. CONST. AMENDS. V, VI, VIII, AND XIV; OHIO CONST. ART. I, §§ 2, 9, 10, AND 16. FURTHER, OHIO’S DEATH PENALTY STATUTE VIOLATES THE UNITED STATES’ OBLIGATIONS UNDER INTERNATIONAL LAW.....	24
PROPOSITION OF LAW NO. 6.....	48
THE TRIAL COURT RENDERED AN IMPROPER SENTENCE WHEN IT ORDERED THE PRISON TERMS ON THE NON-CAPITAL OFFENSES TO RUN CONSECUTIVE TO THE DEATH SENTENCE IN VIOLATION OF FEDERAL AND STATE CONSTITUTIONAL RIGHTS. U.S. CONST. AMEND. XIII & XIV, OHIO CONST. ART. 1 § 9.....	48
PROPOSITION OF LAW NO. 7.....	49
WHERE THE TRIAL COURT WRONGFULLY DENIES MULTIPLE WRITTEN DEFENSE MOTIONS, THE CUMULATIVE EFFECT OF THESE DENIALS CONSTITUTES ABUSE OF DISCRETION AND IS THEREFORE TANTAMOUNT TO REVERSIBLE ERROR.....	49
PROPOSITION OF LAW NO. 8.....	55
THE TRIAL COURT CONVICTED LAMONT HUNTER UPON INSUFFICIENT EVIDENCE THEREBY DENYING HIM DUE PROCESS UNDER THE FEDERAL AND STATE CONSTITUTIONS. U.S. CONST. AMEND. V & XIV, OHIO CONST. ART. I, § 10.....	55
PROPOSITION OF LAW NO. 9.....	56
THE TRIAL COURT VIOLATED THE DUE PROCESS RIGHTS OF LAMONT HUNTER WHEN IT ENTERED A CONVICTION THAT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. U.S. CONST. AMEND. V & XIV, OHIO CONST. ART. I, § 10.....	56
PROPOSITION OF LAW NO. 10.....	57
CONSIDERED TOGETHER, THE CUMULATIVE ERRORS SET FORTH IN APPELLANT’S BRIEF MERIT REVERSAL.....	57
CONCLUSION.....	58
CERTIFICATE OF SERVICE.....	58

**APPENDIX:**

State v. Hunter, No. 07-2021, Notice of Appeal.....A-1  
State v. Hunter, No. B 06000596, Judgment Entry.....A-2  
State v. Hunter, No. B 06000596, Sentencing Opinion.....A-3

**STATUTES**

O.R.C. § 2903.01 (c).....A-4  
O.R.C. § 2929.02.....A-5  
O.R.C. § 2929.021.....A-5  
O.R.C. § 2929.022.....A-5  
O.R.C. § 2929.023.....A-5  
O.R.C. § 2929.03.....A-5  
O.R.C. § 2929.04.....A-5  
O.R.C. § 2929.05.....A-5  
O.R.C. § 2949.22 (A).....A-6  
O.R.C. § 2953.21 (A)(2).....A-7

**CONSTITUTIONAL PROVISIONS**

U.S. Const., Art. I, § 3.....A-8  
U.S. Const., Art. II, § 2.....A-8  
U.S. Const., Art. VI.....A-8  
U.S. Const. Amend. V.....A-9  
U.S. Const. Amend. VI.....A-9  
U.S. Const. Amend. VIII.....A-9  
U.S. Const. Amend. XIV.....A-9

**RULES**

R. EVID. 404 (B).....A-10

**CASES**

Ake v. Oklahoma (1985), 470 U.S. 68, 105 S. Ct. 1087, 84 LED 2d 53.....17

Asakura v. City of Seattle (1924), 265 U.S. 332, 341.....37

Baze v. Rees (2008), 128 S. Ct. 1520.....33, 34

Clark v. Allen (1947), 331 U.S. 503, 508, 67 S. Ct. 1431.....37

Clinton v. City of New York (1998), 524 U.S. 17.....43, 44

Coker v. Georgia (1977) 433 U.S. 584.....24

Commonwealth v. O’Neal II (Mass. 1975) 339 N.E. 2d 676, 678.....26

Delo v. Lashley (1993), 507 U.S. 272, 113 S. Ct. 1222.....28

Dickerson v. Bagley (6th Cir. July 7, 2006), 453 F.3d 690 .....18

Eddings v. Oklahoma (1982), 455 U.S. 104, 113-115.....18, 28

Enmund v. Florida (1982) 458 U.S. 782, 102 S. Ct. 3368.....28

Evitts v. Lucey (1985) 469 U.S. 387, 401, 105 S. Ct. 830.....33

Filartiga v. Pena-Irala (2<sup>nd</sup> Cir. 1980) 630 F. 2d 876.....37, 45

Forti v. Suarez-Mason (N. D. Cal. 1987), 672 F. Supp. 1531.....37

Frolova v. U.S.S.R. (1985), 761 F.2d 370.....44

Furman v. Georgia (1972), 408 U.S. 238.....24, 27

Godfrey v. Georgia (1980), 446 U.S. 420, 100 S. Ct. 1759.....27

Gregg v. Georgia (1976), 428 U.S. 153, 188, 193-95.....27, 35

IN RE Bennett, 2008-OHIO-594.....13

Jackson v. Virginia (1979), 443 U.S. 307, 316, 99 S. Ct. 2781, 2787.....54,55

<u>Johnson v. Texas</u> (1993), 509 U.S. 350, 113 S. Ct. 2658.....	28
<u>Kansas v. Colorado</u> (1907) 206 U.S. 46, 48.....	37
<u>Lockett v. Ohio</u> (1978), 438 U.S. 586, 604, 98 S. Ct. 2954, 57 LED 2d 2293.....	18
<u>McFarland v. Scott</u> (1994), 512 U.S. 849, 855.....	19
<u>Mills v. Maryland</u> (1988), 486 U.S. 367, 108 S. Ct. 1860, 100 LED 2d 384.....	16
<u>Morgan v. Illinois</u> (1992), 504 U.S. 719, 729, 112 S.Ct. 222, 2229-2230.....	16
<u>The Nereide</u> (1815), 13 U.S. (9 Cranch) 388, 422.....	37
<u>The Paquete Habana</u> (1900) 175 U.S. 677, 700, 20 S. Ct. 290.....	45
<u>Penry v. Lynaugh</u> (1989) 492 U.S. 302.....	28
<u>Poindexter v. Mitchell</u> (6 <sup>th</sup> Cir. July 24, 2006), 454 F.3d 564.....	18
<u>Pulley v. Harris</u> (1984), 465 U.S. 37.....	31
<u>Rhodes v. Chapman</u> (1981), 452 U.S. 337, 361.....	24
<u>Robinson v. California</u> (1962), 370 U.S. 660.....	24
<u>Shelton v. Tucker</u> (1960), 364 U.S. 479, 81 S. Ct. 267.....	26
<u>Skinner v. Oklahoma</u> (1942), 316 U.S. 535, 62 S. Ct. 1110.....	31
<u>Spanziano v. Florida</u> (1984), 468 U.S. 447, 460, 104 S. Ct. 3154.....	32
<u>State v. Allen</u> (1995), 73 Ohio St. 3d 626, 630, 653 N.E. 2d 675, 682.....	55
<u>State v. Brooks</u> (1996), 75 Ohio St.3d 148, at 162, 661 N.E. 2d 1030, 1042.....	16
<u>State v. Brown</u> (2007), 115 Ohio St. 3d 55, 62-66; 873 N.E. 2d 858, 866-868...	56
<u>State v. Campbell</u> (1994), Ohio St. 3d 38, 630 N.E. 2d 339.....	48
<u>State v. Conway</u> , 109 Ohio St. 3d 412, 848 N.E. 2d 810.....	23
<u>State v. Davis</u> (2008), 116 Ohio St.3d 404, 880 N.E.2d 31.....	22

<u>State v. Fautenberry</u> (1995), 72 Ohio St. 3d 435, 438-441; 650 N.E. 2d 878, 881-882.....	51
<u>State v. Finnerty</u> (1989) 45 Ohio St. 3d 104, 106-107; 543 N.E. 2d 1233, 1236..	49
<u>State v. Fox</u> (1994), 69 Ohio St. 3d 183, 193, 631 N.E. 2d 124, 132.....	27
<u>State v. Garner</u> (1995), 74 Ohio St. 3d 49, 656 N.E. 2d 623.....	56
<u>State v. Green</u> (2000), 90 Ohio St. 3d 362, 364-365; 738 N.E. 1208, 1224- 1225.....	50
<u>State v. Greer</u> (1981), 66 Ohio St. 2d 139, 420 N.E. 2d 982.....	51, 52
<u>State v. Jenkins</u> (1984), 15 Ohio St. 164, 16 N.E.2d 264.....	48
<u>State v. Johnson</u> (1986), 24 Ohio St. 3d 87, 91, 494 N.E. 2d 1061, 1065.....	48
<u>State v. Keith</u> (1997), 79 Ohio St. 3d 514, 684 N.E. 2d 47.....	21
<u>State v. Martin</u> (1983), 20 Ohio App. 3d 172, 175, 485 N.E. 2d 717.....	56
<u>State v. Murphy</u> (2001), 91 Ohio St. 3d 516, 562, 747 N.E. 2d 765, 813.....	32
<u>State v. Poindexter</u> (1988), 36 Ohio St. 311, 520 N.E.2d 568.....	21, 22, 23, 48, 52
<u>State v. Post</u> (1987), 32 Ohio St. 3d 380, 384; 513 N.E 2d 754, 759.....	50, 51
<u>State v. Rojas</u> (1992) 64 Ohio St. 3d 131, 592 N.E. 2d 1376.....	30
<u>State v. Steffen</u> (1987), 31 Ohio St. 3d 111, 509 N.E. 2d 383, syl. 1.....	32
<u>State v. Stojetz</u> (1999), 84 Ohio St. 3d 452, 459-460; 705 N.E. 2d 329, 337- 338.....	52
<u>State v. Treesh</u> (2001), 90 Ohio St. 3d 460, 476-477; 739 N.E. 2d 749, 768- 769.....	51
<u>State v. White</u> (1968), 15 Ohio St. 2d 146, 239 N.E. 2d 65.....	51

<u>State v. Williams</u> (1996), 74 Ohio St. 3d 569, 660 N.E. 2d 724, syl. 2.....	30
<u>State v. Williams</u> (2003), 99 Ohio St. 3d 493, 794 N.E. 2d 27.....	56
<u>Strickland v. Washington</u> (1984), 466 U.S. 668, 687.....	13
<u>Trop v. Dulles</u> (1958), 356 U.S. 86, 101, 78 S. Ct. 590.....	24, 33
<u>United States v. Pink</u> (1942), 315 U.S. 203, 230, 62 S. Ct. 552.....	38
<u>United States v. Smith</u> (1820), 18 U.S. [5 Wheat] 153.....	45
<u>Utah v. Pierre</u> (Utah 1977), 572 P.2d 1338.....	26
<u>Woodson v. North Carolina</u> (1976), 428 U.S. 280.....	24
<u>Zant v. Stephens</u> (1983), 462 U.S. 862, 877.....	29, 30, 31
<u>Zschemig v. Miller</u> (1968), 389 U.S. 429, 440, 88 S. Ct. 664.....	37

## CONSTITUTIONAL PROVISIONS

U.S. Const., Art. 2 § 2.....	42
U.S. Const. Amend. V.....	passim
U.S. Const. Amend. VI.....	passim
U.S. Const. Amend. VIII.....	passim
U.S. Const. Amend. XIV.....	passim
Ohio Const., Art. I § 2.....	44
Ohio Const., Art. I § 9.....	passim
Ohio Const., Art. I § 10.....	passim
Ohio Const., Art. I § 16.....	passim

## STATUTES

O.R.C. § 2903.01.....	23, 29
O.R.C. § 2929.02.....	47
O.R.C. § 2929.021.....	31, 47
O.R.C. § 2929.022.....	47
O.R.C. § 2929.023.....	47
O.R.C. § 2929.03.....	28, 31, 41, 47
O.R.C. § 2929.04.....	28, 29, 36, 40
O.R.C. § 2929.05.....	32, 33, 47
O.R.C. §2949.22.....	33
O.R.C. §2953.21.....	25

## RULES

Ohio Sup. R. 20.....	20
Ohio R. Evid. 404(B).....	22, 23

## OTHER AUTHORITIES

American Convention on Human Rights (1978).....	46
American Declaration of the Rights and Duties of Man adopted by the Ninth International Conference of American States in 1948.....	46
Comment, <u>The Constitutionality of Imposing the Death Penalty for Felony Murder</u> , 15 Hous. L. Rev. (1978).....	30
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment Or Punishment (1994).....	36

Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities, U.S. General Accounting Office, Report to Senate and House Committees on the Judiciary (February 1990).....	25
Declaration on the Protection of All Persons from Being Subjected to Torture And Other Cruel, Inhuman, or Degrading Treatment or Punishment adopted by the U.N. General Assembly in Resolution 3452 (XXX) in 1975.....	34
Erica Ryan, “Botched Execution Fires Up Opponents of Death Penalty,” <u>Columbus Dispatch</u> , May 4, 2006.....	35
<u>Gacy Lawyers Blast Method: Lethal Injections Under Fire After Equipment Malfunction</u> , <u>Chicago Sun-Times</u> , May 11, 1994.....	35
Hofstra Law Review, Volume 31, No. 4, Summer 2003, p. 923.....	19
International Convention on Civil and Political Rights (1992) (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1994).....	passim
International Convention on the Elimination of All Forms of Racial Discrimination (1994).....	34
Jim Provance and Christina Hall, “Clark Execution Raises Lethal Injection Issues,” <u>Toledo Blade</u> , May 2008.....	34
Jon Craig and Sharon Coolidge, “Suspend Executions, Bar Group Urges Ohio,” <u>Cincinnati Enquirer</u> , September 25, 2007.....	26
Kathy Sawyer, <u>Protracted Execution In Texas Draws Criticism; Lethal Injection Delayed by Search for Vein</u> , <u>Washington Post</u> , March 14, 1985.....	35, 36
<u>Killer Lends a Hand to Find Vein for Execution</u> , <u>LA Times</u> , August 20, 1992.....	35, 36
<u>Killer’s Drug Abuse Complicates Execution</u> , <u>Chicago Tribune</u> , April 24, 1992.....	35, 36
Lou Ortiz and Scott Fornek, <u>Witnesses Describe Killer’s ‘Macabre’ Final Few Moments</u> , <u>Chicago Sun-Times</u> , May 11, 1994.....	35
Marian J. Borg and Michael Radelet, <u>Botched Lethal Injections</u> , 53 <u>Capital Report</u> , March/April 1998.....	35
<u>Moans Pierced Silence During Wait</u> , <u>Arkansas Democrat Gazette</u> , January 26, 1992.....	36

<u>Murderer Executed After a Leaky Lethal Injection</u> , New York Times, December 14, 1988.....	35, 36
<u>Murderer of Three Women is Executed in Texas</u> , NY Times, March 14, 1985.....	36
Ohio Public Defender Commission Statistics, February 12, 2003.....	25
Press Release of Jonathan I. Groner, M.D., June 29, 2006.....	35
<u>Rector’s Time Came, Painfully Late</u> , Arkansas Democrat Gazette, January 26, 1992.....	35, 36
Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty adopted by the U.N. Economic and Social Council in Resolution 1984/50 in 1984.....	47
Second Optional Protocol to the ICCPR, aiming at the abolition of the death Penalty, adopted and proclaimed by the U.N. General Assembly in Resolution 44/128 in 1989.....	47
The Report of the Ohio Commission on Racial Fairness, 1999.....	25
William A. Schabas, <u>The Death Penalty as Cruel Treatment and Torture</u> , (1996).....	45

**APPENDIX:**

<u>State v. Hunter</u> , No. 07-2021, Notice of Appeal (Ohio Sup. Ct., Nov. 9 <sup>th</sup> , 2007).....	A-1
<u>State v. Hunter</u> , No. B-0600596, Judgment Entry.....	A-2
<u>State v. Hunter</u> , No. B-0600596, Opinion.....	A-3

**CONSTITUTIONAL PROVISIONS**

U.S. Const., Art. 2 § 2.....	A-8
U.S. Const. Amend. V.....	A-9

U.S. Const. Amend. VI.....	A-9
U.S. Const. Amend. VIII.....	A-9
U.S. Const. Amend. XIV.....	A-9
Ohio Const., Art. I § 2.....	A-8
Ohio Const., Art. I § 5.....	A-10
Ohio Const., Art. I § 9.....	A-10
Ohio Const., Art. I § 10.....	A-10
Ohio Const., Art. I § 16.....	A-10

**STATUTES**

O.R.C. § 2903.01.....	A-4
O.R.C. § 2903.02.....	A-5
O.R.C. § 2903.021.....	A-5
O.R.C. § 2903.022.....	A-5
O.R.C. § 2929.03.....	A-5
O.R.C. § 2929.04.....	A-5
O.R.C. § 2929.05.....	A-5
O.R.C. § 2929.06.....	A-5
O.R.C. § 2949.21.....	A-6
O.R.C. § 2953.21.....	A-6

**RULES**

Ohio R. Evid. 404 (B).....	A-11
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## STATEMENT OF THE CASE

On February 1, 2006, the Hamilton County Grand Jury indicted Lamont Hunter with one count of aggravated murder, O.R.C. §2903.01 (C); one count of rape, O.R.C. §2907.02 (A)(1)(b); and one count of endangering children, O.R.C. §2919.22 (B)(1).

The aggravated murder count had two death-penalty specifications attached: one involving the commission of rape or attempted rape in the course of the murder and the other for the victim being under the age of thirteen years.

The Honorable Norbert A. Nadel, Court of Common Pleas, originally presided over the case. On May 22, July 6, and August 22, 2006, Judge Nadel heard and ruled upon pretrial motions.

On February 5, 2007, more than one year after the case began, the jury trial was to start. Solo privately-retained counsel appeared on Defendant's behalf to relieve the two court-appointed counsel who had done all of the pretrial work and were prepared to try the case that day. Judge Nadel continued the case.

On June 6, 2007, Hunter waived his right to a trial by jury and elected to have his case heard by a three-judge panel. The Honorable Ralph E. "Ted" Winkler and the Honorable Alex M. Triantifilou joined Judge Nadel to form the panel. Judge Nadel was to preside.

On June 11-15, 2007, the three-judge panel heard the guilt-phase of the trial. The defense presented no case-in-chief and only two exhibits. The panel found Hunter guilty of all charges.

On September 5, 2007, the panel heard the mitigation phase of the trial.

On September 20, 2007, the panel sentenced Hunter to death on the aggravated murder charge, to life without parole on the rape charge, and to eight years on the endangering children charge. All time was to run consecutively. The panel also ordered Hunter classified as a sexual predator.

Appellant Lamont Hunter is now before this Court on his appeal as of right.

### **STATEMENT OF FACTS**

On January 19, 2006 (T.p. 140), Lieutenant Eric T. Prather of the Cincinnati Fire Department responded to a call at 16 West 68<sup>th</sup> Street in the Carthage neighborhood of Cincinnati (T.p. 129-131) involving a young child who had reportedly fallen down a flight of steps (T.p. 132-133). A gentleman identified as Lamont Hunter waved the emergency personnel into the house (T.p. 134-135, 150). Hunter had already taken the child, Trustin Blue (T.p. 136), and placed him on the couch (T.p. 151). The fire personnel summoned paramedics to the scene (T.p. 137) and they went to work on the child (T.p. 167-169).

Hunter told Lieutenant Prather that Trustin had fallen down the steps and that the fall could have occurred when Trustin tried to keep a little girl there from falling down the stairs (T.p. 139). Prather saw no scrapes on Trustin (T.p. 143). Another responder likewise saw no visible injuries (T.p. 171-172). At trial, Prather acknowledged that someone did try to help the victim by calling 911 (T.p. 145) and that the 911 tape does

show that Hunter was concerned and was trying to help the situation (T.p. 148-149). Prather also acknowledged that he did not speak to the child's mother regarding her contact with the child the night before or with anyone regarding the child's interactions with his siblings while sleeping with them the night before (T.p. 157).

Emergency personnel took Trustin to Children's Hospital. The emergency department contacted Officer Jane Noel of the Personal Crimes Unit of the Cincinnati Police (T.p. 192-193). She spoke to the attending doctor and the fire personnel (T.p. 194). Officer Noel then went to the emergency room, where she met Lamont Hunter. She asked him to come to her office at the hospital to discuss the incident (T.p. 196-197). Hunter came along with her voluntarily even though he did not have to (T.p. 222).

Hunter said nothing incriminating in the interview. Hunter asked Noel how Trustin was doing (T.p. 240-241). He never admitted to causing Trustin any harm (T.p. 226). In fact, Hunter had tried to render CPR, but Trustin would not respond (T.p. 228). Hunter denied that he had physically disciplined Trustin in this case (T.p. 233). Hunter denied violently shaking the child (T.p. 243-244). He said repeatedly that he was unaware of anything else other than the fall that would have caused Trustin's injury (T.p. 238). Hunter never admitted to losing his temper, getting angry, or being violent (T.p. 240).

Officer Noel never asked Hunter about a rape (T.p. 226).

Officer Noel did not know if Trustin had a recent preexisting injury that manifested itself on the day in question (T.p. 237).

At trial, Officer Noel acknowledged that Trustin was away with other family members at their residence the night before the incident, and that she did not know who

all was present that evening (T.p. 230-231). She admitted that she did not investigate everyone who had been around Trustin for the three days prior to his death (T.p. 232). She did learn that Trustin was in bed with his mother Luzmilda Blue until 6:00 that morning and then slept with his brothers afterwards (T.p. 245).

Police Specialist Barbara Mirlenbrink responded to the premises (T.p. 253-254). No blood or body fluids were found on the basement steps. In fact, nothing of any evidentiary value was found there (T.p. 259). Mirlenbrink returned on January 27 to look for any sharp objects that could have been used for an anal rape (T.p. 260). She found nothing she could tie to the incident (T.p. 261, 271). There was no evidence of any body fluids or any efforts to clean up after a crime (T.p. 257, 276, 278). Indeed, Mirlenbrink found nothing in the house to physically link Hunter to a rape of Trustin (T.p. 270).

Having been advised that Trustin allegedly fell down the basement steps (T.p. 255-256), Mirlenbrink measured them. The steps were 11' 2" from the kitchen landing to the basement. The second step from where Trustin had fallen was 1' 6 ½" from the floor (T.p. 267-268).

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Wilma Forte was a close family friend of the victim's mother, Luzmilda Blue (T.p. 495). Forte's daughter April brought Trustin to stay with them (T.p. 495-496) from November or December 2005 through January 2006 (T.p. 523-524). Other relatives also stayed in the apartment (T.p. 525-526). Luzmilda had a history of calling the welfare authorities and asking them to take her children before she did something to them or herself (T.p. 528-529). This was even before Lamont Hunter was involved with them

(T.p. 532). She did not know where Luzmilda may have taken Trustin on January 18 (T.p. 541). Forte understood that Trustin had been shaken so hard that his brain had swollen (T.p. 521). She noted that, at the hospital, Hunter kept saying that it was an accident (T.p. 519).

Dr. Katherine Makoroff (T.p. 287) was the attending physician at Children's Hospital (T.p. 288) on the day in question (T.p. 308). She spoke with Lamont Hunter (T.p. 308). Hunter said he was in the basement with the nine-month-old sibling. Hunter heard a rumbling noise above him. He looked and saw Trustin tumbling down the last few basement steps all the way to the concrete floor. Hunter attended to Trustin. The child did not respond. Hunter splashed water on his face and called Luzmilda, who was working nearby (T.p. 310). A physical exam at the hospital revealed no bruises, marks, or other signs of injury. Dr. Makoroff did see what she thought was bleeding on the retina (T.p. 313-314). She further discovered an anal tear with bleeding and bruising. Those injuries were inconsistent with penetration by an adult penis (T.p. 317-318). There was also hemorrhaging and swelling of the brain (T.p. 319).

Dr. Makoroff admitted a number of uncertainties about the incident. She did not know how many shakes or how much force it takes to kill a baby. She did not know the length of time required to inflict injury on a child to cause death (T.p. 357). She could not say how the child was shaken or for how long, or how much force was used to inflict death (T.p. 357-358). The doctor conceded that even a little force, like a fall down the stairs, could cause bleeding from a preexisting injury (T.p. 365). The time of the injury could not be stated with certainty (T.p. 403, 404, 431). Trustin could have suffered

severe neurological injury hours before presentation (T.p. 431). Dr. Makoroff did not know how Trustin fell down the steps (T.p. 396).

Mona Grethel Case Harlan Stephens, a forensic pathologist for the Hamilton County Coroner's Office (T.p. 582), performed the autopsy of Trustin Blue on January 22, 2006 (T.p. 584). She determined that the child's two head injuries were consistent with being struck by or against a broad surface and that the injuries occurred close together in time (T.p. 593). There was an anal tear as well as rectal perforations or ulcerations caused by something sharp. Hemorrhaging also had occurred there (T.p. 594-596). Stephens could not examine the whole body because many of the organs had been harvested (T.p. 585, 597). She determined that the cause of death was "blunt impact / shaking injuries to the head" (T.p. 601).

Stephens acceded certain questions and qualifications regarding the death. She did not know how Trustin fell down the steps. She did not know exactly what any perpetrator may have done (T.p. 635). She acknowledged medical literature that states that head injuries predominate falls down steps (T.p. 635). Stephens admitted that a short fall with a rotational component would produce more force and, furthermore, a rotational fall would be consistent with the shearing of the neck that Trustin experienced (T.p. 636). The child could have fallen down the stairs and landed at the base, without touching the other stairs (T.p. 641). Indeed, Stephens admitted, one could sustain a nondisplaced dislocation of a vertebrae disc from a fall down he steps, if there was enough shearing injury and height (T.p. 644).<sup>1</sup> She also acknowledged a medical study where in more than one-fourth of head injury deaths, especially shaken baby cases, that the interval from the injury to the onset of the most severe symptoms is longer than 24 hours (T.p. 647).

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<sup>1</sup> Please note Criminalist Mirlenbrink's testimony above, indicating the entire steps measured over 11 feet.

Stephens testified that all injuries were consistent with Shaken Baby Syndrome and impact injuries (T.p.642-643).

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Many family members spoke on Lamont Hunter's behalf during the mitigation phase of the trial.

His mother, Harriet Elizabeth Hunter (T.p. 744), spoke of how Hunter supported the immediate family (T.p. 742). He would help with household chores (T.p. 743). He got along well with his siblings (T.p. 746). He was involved with all of his nieces and nephews. He did a lot with them and for them. He would take them fishing. The children would come to him if they needed anything (T.p. 744-745). He would help the children with their homework and he would warn them to "stay off the corners" (T.p. 743). Hunter was likewise engaged with his own four children (T.p. 747).

Ms. Hunter noted that her son had a good relationship with Trustin (T.p. 744). Hunter got along fine with the child. They would talk and give one another "high-fives" (T.p. 746).

Ms. Hunter never saw her son lose his temper, be abusive, or become violent (T.p. 747-748).

Ms. Hunter had communicated with her son after the case began and thought he was salvageable (T.p. 748). She believed he was remorseful and that he was so sorry that Trustin had died (T.p. 749).

Ms. Hunter loved her son (T.p. 750). He was "[a] loving son and a caring son" (T.p. 743). His execution would have a terrible effect upon her (T.p. 750).

Hunter's father, Leevel Hunter (T.p. 751), said that his son was no problem as a child (T.p. 752). Lamont was dependable. He did chores around the house (T.p. 752). He was a helpful, supportive son even into adulthood. He would also help with the older children (T.p. 753, 755). Lamont got along well with his siblings (T.p. 754).

The elder Hunter never observed his son as violent, threatening, or even discourteous (T.p. 756). Lamont was always attentive to Trustin (T.p. 756).

Mr. Hunter believed Lamont was an asset to society (T.p. 755). The father loved his son and wanted him to live. His execution would hurt the father deeply (T.p. 757).

Theresa Tomlin and Lamont Hunter had a child together, their daughter Ashley (T.p. 761-762). Lamont was very close to Ashley, and was always there for her (T.p. 765, 768). He was supportive when she had asthma (T.p. 765). Lamont provided for Ashley (T.p. 767). He also treated Ms. Tomlin's other child as his own (T.p. 763), and was supportive of his own children (T.p. 765). She would allow Lamont around her children unsupervised (T.p. 766). There were no problems with abuse (T.p. 763, 767). Lamont was also good to nieces and nephews. He would take them to the park and buy them candy (T.p. 762-763) and likewise for his ex-wife's children, as well (T.p. 764). He would take all the children fishing, on picnics, out to eat, and to family functions (T.p. 764-765).

Ms. Tomlin noted that Lamont seemed fine around Trustin (T.p. 768).

Ms. Tomlin saw Lamont Hunter as a very loving and caring person (T.p. 766). His being put to death would virtually kill their daughter (T.p. 768-769).

Tamara Mitchell was Lamont Hunter's ex-wife. They were married from 1996 to 1999. Lamont provided for the family (T.p. 778). They had a son named Lamont, Jr.

(T.p. 771-772). Lamont, Sr. was the “best father” to her own children as well (T.p. 775). Her own daughter, Maria Brown, regarded him as her own father (T.p. 773).<sup>2</sup> Likewise, her own son, Eric Taylor, loved him more than his biological father (T.p. 774). Lamont made Lamont, Jr. into a courteous, helpful young man (T.p. 776). And Lamont, Jr. was fine with Trustin Blue (T.p. 778). Lamont [was] “fun, caring, thoughtful, help anybody any time, any situation [sic]” (T.p. 777). Ms. Mitchell did not look upon him as abusive (T.p. 777) nor were there any abuse problems with the children (T.p. 773). Lamont’s domestic violence involvements did not impact how Ms. Mitchell regarded his treatment of other people (T.p. 782). If something happened to Lamont, her household would not be the same (T.p. 776).

Debra Barnes was Lamont Hunter’s sister (T.p. 783-784). She spoke about how their father’s alcoholism impacted Lamont. He witnessed his parents arguing and physically fighting (T.p. 785-786). Lamont was good with all the children in the family, including her own, like her daughter Trinity (T.p. 786, 788). Ms. Barnes also mentioned how Lamont was getting ready to start his own seal-coating business when this incident happened (T.p. 784-785). Lamont was an integral part of their family. His execution would be totally devastating and the family would fall apart (T.p. 790).

Ashley Hunter, Lamont’s eighteen-year-old daughter (T.p. 795), testified about her father’s influence on her life. He was an engaged father who was an important part of her life. He meant everything to her. She would not know how to act if he was no longer around. He was her support (T.p. 795-796). His death would kill a part of her, and she would not be the same person (T.p. 797).

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<sup>2</sup> Ms. Brown echoed and elaborated upon this in her own mitigation testimony (T.p. 791-794).

Finally, Lamont Hunter gave an unsworn statement on his own behalf which was read on the record by defense counsel. Hunter explained how he shaped up his life by getting out of the drug trade and learning the seal-coating trade (T.p. 801). He even started his own seal-coating business (T.p. 801-802). Hunter was a God-fearing man who would not harm a child and did not believe in corporal punishment. He denied committing the offenses (T.p. 803).

Lamont Hunter was remorseful over the loss of Trustin Blue. He regarded Trustin as a son. He loved Trustin and would always love him (T.p. 802).

## **PROPOSITION OF LAW NO. 1**

**APPELLANT IN A CAPITAL CASE IS ENTITLED TO EFFECTIVE COUNSEL AS TO BOTH THE MERIT PORTION AND THE SENTENCING PORTION OF THE CASE.**

**1. Background information and "legal basics"**

**The 5th, 6th, 8th, and 14<sup>th</sup> Amendments of the Constitution of The United States as well as Article One Sections 5, 9, 10, and 16 of the Constitution of the State of Ohio guarantees each and every defendant the right to a focused, thoughtful, vigorous defense at both the merit phase and the penalty phase of his trial.**

**Appellant was sentenced to death for the rape and the murder of a three-year-old boy on September 20, 2007. However on September 26, 2007, Hunter's counsel, Cincinnati attorney Clyde Bennett pleaded guilty to making illegal financial transactions ["money laundering"] in United States District Court in Dayton. Underlying transactions from 2002 to 2003 wherein Bennett made multiple bank deposits to his own account, totaling \$124,000.00 violated federal law, because they were structured to circumvent laws that require banks to report deposits [especially cash deposits] of \$10,000.00 or more.**

**Judge Thomas Rose said that the deposits included at least some proceeds from "unlawful activity." Federal prosecutors declined to describe the specifics of the unlawful activity, and refused to comment on Bennett's allegation that they had asked him to "snitch" [provide information against other undesignated defendants in the underlying illegal criminal activity] as part of his plea & sentence negotiations. Under federal sentencing guidelines, Bennett's sentence could range anywhere from a sentence of probation to up to 30 months in federal prison. Lawyers on both sides of the case have refused to explain how Bennett's financial transactions became the focus of a federal**

investigation involving the Internal Revenue Service and the Drug Enforcement Administration.

On December 28, 2008, Bennett received a sentence of 24 months incarceration. Assistant United States Attorney Dwight Keller said that attempts to evade bank reporting requirements are of concern to agents of law enforcement, because they sometimes mask other illegal conduct such as drug transactions, organized crime, or terrorism. Initially, Bennett had stated that all of the funds in question were part of fees legally obtained in his criminal defense practice. Bennett maintained that he had refused to cooperate with authorities investigating his case. They asked him to snitch and he refused, according to Bennett. For public policy reasons, including but expressly not limited to the need not to compromise pending and future criminal investigations against other suspects, federal pretrial investigation reports generated to assist the court at sentencing are confidential. Clyde Bennett is currently serving his sentence at the federal prison at Morgantown, West Virginia. It should be noted that Bennett apologized to his family and to his fellow lawyers, and he stated that he takes full responsibility for his actions, Dan Horn, "Attorney Gets Two Years in Prison," Cincinnati Enquirer, December 31, 2007.

As a direct result of Bennett's plea and sentencing, the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio certified to the Supreme Court a certified copy of a judgment entry of a felony conviction, pursuant to Gov.Bar.R. V (5)(A)(3). Upon consideration thereof and pursuant to Gov.Bar R. V(5)(A)(4), it was ordered that Bennett's license to practice law was to be immediately

suspended for an interim period. Procedurally the matter was then referred to the Disciplinary Counsel for investigation and commencement of formal disciplinary proceedings. Bennett's interim suspension is a reported decision. 02/15/2008 Case Announcements, 2008-Ohio-594, *In Re: Bennett*. U.S. District Court for the Southern District of Ohio, Western Division, issued a parallel order that he surrender his License in 1:08 MC-1-SSB.

There is a two-part test for determining if Appellant received the effective assistance of counsel guaranteed to him under both the Constitutions of the United States and of the State of Ohio. With the burden being an affirmative one imposed upon appellant, he must show that:

1. Counsel's performance was deficient. This requires showing that counsel made errors or omissions so serious that counsel was not functioning as the "counsel" guaranteed by the 6th Amendment.
2. The defendant must show that the deficient performance prejudiced the defense. This requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. *Strickland v. Washington* (1984), 466 U.S. 668, 687.

A combination of both direct and circumstantial evidence can be used to show that a conviction and a death sentence resulted in a breakdown of the adversary process that renders the result constitutionally infirm. The Ohio Supreme Court can also take judicial notice of certain events, findings, and circumstances that are relevant and material to this determination. On July 27, 2007, the Ohio Supreme Court's committee on appointment of counsel for indigent defendants in capital cases sent all defense counsel certified under Rule 20 [Qualifications & Certification for counsel in the defense of indigent defendants charged with capital murder] a detailed letter, seeking input prior

to the expected goal of making adjustments and improvements (proposed changes) to those criteria. In that letter, the "gold standard" of criteria of such counsel [a standard higher than the *Strickland* standard] was identified as *The American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases*, Revised 2003 Edition, American Bar Association. Inferentially it must be stated that private counsel are required to perform under the same criteria. On the other hand, a defendant may choose to walk away from competent certified counsel [TWO counsel] and their entire defense team, and go with counsel [ONE counsel] of his choice. It is not uncommon for indigent defendants to "buy into" the common jailhouse lawyer stereotype, which [incorrectly] presumes that appointed counsel are either unwilling or unable to present a vigorous defense. Concededly, it is true that in some unfortunate cases the stereotypical result mirrors the reality of a particular client's defense. But ironically in the area of defense of capital cases it is the defense team of appointed trained & certified lawyers and their investigators and experts that turns out the superior work product.

The commentary to the original edition of the Guidelines stated that they were designed to express existing "practice norms & constitutional requirements." This thought [in the 2003 revised edition] has been moved to the black letter, in order to emphasize that these guidelines are not merely aspirational. Instead, they embody the current consensus about what is required to provide effective assistance of counsel in capital cases.

Clyde Bennett's performance was so inadequate that it is somewhat difficult just figuring out where to start the litany of deficiencies. Errors of omission as well as commission include but are expressly NOT limited to:

1. The failure to get involved right from the onset of law enforcement's focus on Appellant. Clyde Bennett showed up in the courtroom on the date that this case was set to go to trial before a jury with the appointed defense team. He asked for and was granted a continuance, reciting that he had just been hired by Appellant's family, and was unprepared to proceed. It should be known that we now know that Bennett's assets [\$124,000.00 in suspect laundered cash] had been effectively compromised by the DEA & IRS, working with the Organized Crime Assistant United States Attorney ....Bennett was desperate for cash, and not inclined to tell defendant-appellant's family that he was distracted by his own issues, and unable to go forward effectively.
2. Clyde Bennett had Appellant waive trial by jury and proceed with a three-judge panel. Had Bennett known and shared statistical data discrediting the wisdom of this course of behavior, Appellant would have had a fighting chance at both the merit and penalty phases. Instead this decision, defined by virtually all experts as presumptively malpractice, was undertaken.

Ohio's Death Penalty statutes, O.R.C. 2929.03 and O.R.C. 2929.04, provide for a mandatory life sentence if a jury determines that the aggravating circumstances as set forth in the indictment and proven during trial do not outweigh the mitigating factors beyond a reasonable doubt. The Ohio Supreme Court has held that "a solitary juror may

prevent a death penalty recommendation" by making that finding. *State v. Brooks* (1996), 75 Ohio St.3d 148, at 162. The Ohio Supreme Court has embraced the U.S. Supreme Court's concept that the trial court must permit voir dire on a potential juror's willingness to consider mitigation and not automatically vote for death. *Morgan v. Illinois* (1992), 504 U.S. 719, 729, 112 S.Ct. 222, 2229-2230.

A natural extension of *Morgan* is the concept which prohibits a requirement that the jury must be unanimous in finding evidence presented during the penalty phase as mitigation. *Mills v. Maryland*, 486 U.S. 367, (1988). Simply put, each juror must consider and weigh the evidence presented and decide what value to assign it as mitigation. As such, one solitary juror, under *Brooks*, may give/assign sufficient weight to a mitigating factor to negate a death sentence. *Brooks* also calls for juries to be so instructed. (*Id.* at 162). This concept must be introduced as early in the process as possible.

A capital defense attorney must ensure that each juror, starting from voir dire, realizes how the death penalty statute really works, find the jurors most likely to give death and remove them, find the jurors most likely to give life in your case, and then teach them how to do it.

In order to meet these tasks, the attorney must begin voir dire with a system that, is hopefully effective and efficient. A jury waiver destroys these advantages.

3. Clyde Bennett asked for and was granted a short continuance between the merits phase [resulting in defendant-appellant's conviction of all counts and specifications] in order to prepare for mitigation. He prepared and filed an entry of continuance form, and in the blank space following the word "reason" he said

that the mitigation specialist previously hired by the two appointed lawyers had taken a new job, and was unavailable, and therefore he was going to also investigate and prepare for mitigation himself (T.d. 384). See also Proposition of Law No. 3, infra.

4. Counsel for defendant-appellant violated the principle that "team defense" is the only acceptable standard from which to proceed. Not to proceed with an extra lawyer is to be unable to subdivide the workload. An independent defense investigator is necessary, both at merits and mitigation phases. It is presumptively malpractice to go to trial, relying exclusively on what may in fact be good cross-examination skills, and hope to impeach the prosecution's expert witnesses. When those experts failed to waiver from their conclusions that this was NOT a shaken baby case, and that the time-line was such that it included ONLY Appellant as a suspect with opportunity to proceed, the handwriting was on the wall. Conviction at both phases was a predetermined conclusion.
  
5. Appellant's trial lawyer employed the services of neither a psychologist nor a psychiatrist. Even if we assume that Lamont Hunter was competent to stand trial, he was unable to sua sponte tell his lawyer subjective factors in his background which might create reasons why he should not be executed. The worst case scenario, and assuming that all other psychological and neurological testing had failed to create mitigation material and witnesses, was that Clyde Bennett should have had Appellant evaluated as to his lack of potential to injure or kill others while serving a hypothetical life sentence. Studies which mostly originate in

Texas are now black-letter law in the field of mitigation psychology. They indicate that it is usually highly unlikely that even a rapist and killer of a three-year-old child would ever show aggression against other inmates or guards. Juries often can be steered into consideration of one of Ohio's three life sentences, but not if they feel that new atrocities will be forthcoming. Experts are mandated to be given to indigent defendants. *Ake v. Oklahoma* (1985), 470 U.S. 68, 105 S. Ct. 1087, 84 LED 2d 53.

6. Along with preparing to counter the prosecution's case for the death penalty, defense counsel must develop an affirmative defense case for sparing the defendant's life. A capital defendant has an unqualified right to present any facet of his character, background, or record, that might call for a sentence of less than death. *Eddings v. Oklahoma* [1982], 455 U.S. 104, 113-115, *Lockett v. Ohio* [1978], 438 U.S. 586, 604, 98 S. Ct. 2954, 57 LED 2d 2293. However, this right is meaningless, unless defense team efforts are allowed to unearth, develop, present, and insist on the consideration of those compassionate or mitigating factors that stem from the diverse frailties of mankind. Furthermore, such evidence to be persuasive must be consistent with evidence presented in the merit phase, and unless it links itself to specific documented client circumstances.<sup>3</sup> FN X2

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<sup>3</sup> FN X2: (next page)

*Dickerson v. Bagley*, 453 F.3d 690 (6th Cir. July 7, 2006) Sixth Circuit reverses petitioner's death sentence due to ineffective assistance of counsel. Counsel failed to adequately investigate petitioner's life history and thus did not present relevant mitigating evidence to the three-judge state court panel deciding the sentence.

Every task ordinarily performed in the representation of a criminal defendant is more difficult and time-consuming when the defendant is facing execution. The responsibilities thrust upon defense counsel in a capital case carry with them psychological and emotional pressures unknown elsewhere in the law. Defending a capital case is an intellectually rigorous enterprise, requiring a command of the rules and standards unique to capital litigation and constant vigilance in keeping abreast of new developments in a volatile and highly-nuanced area of law. Hofstra Law Review, Volume 31, Number 4, Summer 2003, pg. 923 (2003), and *McFarland v. Scott* (1994), 512 U.S. 849, 855.

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The panel did not learn about petitioner's neglectful mother and difficult childhood, that petitioner has a full-scale IQ of 77, or that psychological testing revealed that petitioner has a borderline personality disorder. Counsel's choice to present a diminished capacity defense, resting on the testimony of two mental health experts who had interviewed petitioner for an hour and a half on the issue of insanity and determined he was sane but in emotional turmoil at the time of the crime, was not fully informed. Petitioner was prejudiced: If anyone of the three judges found that the mitigating factors outweighed the aggravating factors, petitioner would have been sentenced to life in prison.

*Poindexter v. Mitchell*, 454 F.3d 564 (6th Cir. July 24, 2006) The Sixth Circuit affirms the district court's grant of penalty phase relief based on counsel's failure to conduct an adequate investigation of possible mitigation evidence. Counsel conducted almost no investigation, "let alone sufficient investigation to make any strategic choices." Counsel did not begin a mitigation investigation until petitioner was convicted, and the penalty trial began five days later. Counsel did not seek medical, educational, or governmental records, did not request funds for a mental health evaluation, did not retain an investigator or mitigation specialist, and failed to interview key family members and friends, who could have revealed the abuse and neglect petitioner suffered as a child and general chaos of his early life. A post-conviction mental health evaluation resulted in a diagnosis of paranoid personality disorder, a common feature of which is pathological jealousy. The circuit court finds petitioner was prejudiced by this inadequate investigation, and remands the case to state court for further sentencing proceedings.. [Editor's Note: The holding just summarized was unanimous, but this decision is remarkable for its concurring opinions.]

Prior to trial, defendant's predecessor counsel moved to exclude 404-B "Other Bad Acts" Evidence. See Proposition of Law No. 4. Notwithstanding that fact, however, defense counsel Bennett failed to object when prosecutors brought up two different convictions for selling drugs at the penalty phase. (T.p. 758). Three violent incidents with ex-wife Ms. Mitchell (not involving Trustin) were also brought up, (T.p. 781). No objections were raised.

Other mistakes took place as well. Sidebar conferences were not recorded. And the defense never forced the assistant coroner or pediatrician, critical State's witnesses, to put forward their credentials.

Counsel for Appellant had an affirmative obligation, using a standard higher than *Strickland*, to protect the accused's 6th Amendment right to competent counsel, to protect his 14th Amendment right to deny or rebut factual allegations made by the prosecution in support of both guilt and the penalty of death, and the client's 8th Amendment right not to be sentenced to death based upon prior convictions obtained in violation of his constitutional rights. In the instant case, there is no basis from which this court can reasonably determine whether Appellant's convictions involved sufficient evidence, or whether they were obtained by a showing of the manifest weight of the evidence, and beyond a reasonable doubt.

7. Counsel furthermore has an affirmative obligation, and notwithstanding the possibility that the client maintains factual innocence, to seek an agreed recommended verdict and sentence resulting in a sentence other than death. This area received what seemed to be special attention in the ABA Guidelines, perhaps

because it was so basic that many death penalty capital litigators seem to “fly right over it”, as though its intangibility meant that it was a non-issue.

## **PROPOSITION OF LAW NO. 2**

Privately-retained counsel in a capital case who is not certified to represent capital defendants pursuant to Ohio Sup. R. 20 is presumed to provide ineffective assistance of counsel in violation of the defendant’s federal and state constitutional rights. U.S. Const. Amend. VI, Ohio Const. Art. 1, § 10.

1. Hunter’s privately-retained counsel was not certified to try capital cases in Ohio.

The record in this case does not demonstrate that successor trial counsel was certified to try capital cases in Ohio. His designation-as-counsel entry only shows, in effect, that he became the new counsel (T.d. 244). There is no mention of his qualifications. There is no indication that he could build upon the substantial foundation laid by his properly-credentialed predecessors.

Appellant is aware that this Court addressed and settled this issue in the case of State v. Keith, 79 Ohio St. 3d 514, 684 N.E. 2d 47 (1997). However, Appellant wishes to preserve the matter for federal review pursuant to State v. Poindexter, 36 Ohio St. 3d 1, 520 N.E. 2d 568 (1988).

Furthermore, considering retained-counsel’s late entrance into the case combined with the deficiencies demonstrated above, uncertified counsel was indeed ineffective, and Appellant asserts that this deprived him of his federal and state right to counsel.

### PROPOSITION OF LAW 3

Trial counsel rendered ineffective assistance when he did not follow through with expert testimony in the mitigation phase of the trial, thereby violating the federal and state constitutional rights of the accused. U.S. Const. Amend. VI, Ohio Const., Art. 1 § 10.

1. Trial counsel never presented the appointed mitigation expert.

The defense had previously obtained a mitigation expert for Lamont Hunter. After the guilt phase was completed, trial counsel advised the court that the expert, Martha Phillips, would appear at the mitigation proceedings (T.p. 722). However, on July 10, 2007, trial counsel filed a motion for continuance, indicating that Ms. Phillips was no longer available and no longer worked in that field (T.d. 384). On July 19, 2007, the court granted the continuance (T.p. 725) and on the following September 5, the mitigation phase occurred, consisting wholly of family members speaking in support of Hunter (T.p. 740, et. seq., Statement of Facts, supra).

Appellant acknowledges this Court's holdings in State v. Johnson, (1986) 24 Ohio St. 3d 87, 91, 494 N.E. 2d 1061, 1065 (the decision to forgo presenting additional mitigating evidence does not itself constitute ineffective assistance of counsel) and State v. Davis, 116 Ohio St. 3d 404, 880 N.E. 2d 31 (2008) (no ineffective assistance of counsel where no psychological testimony was presented and the record was void of reasons why the witness was not called or what the testimony would have been). It therefore appears that under the current State of Ohio law that such a move was within trial counsel's latitude. However, Appellant wishes to preserve the matter for federal review pursuant to State v. Poindexter, 36 Ohio St. 3d 1, 520 N.E. 2d 568 (1988).

**PROPOSITION OF LAW NO. 4**

Admission of other-acts evidence regarding past injuries to the victim is an abuse of discretion and a denial of the right to due process under both the federal and state constitutions. R. Evid. 404 (B), U.S. Const. Amend. V, Ohio Const., Art. I § 10.

1. Admission of evidence of alleged prior abuse of Trustin Blue was prejudicial to the defendant and denied him due process of law.

The three-judge panel admitted into evidence and heard a substantial volume of matter relating to injuries to Trustin Blue that allegedly occurred while in the care of the accused in January and June 2004. The court overruled a motion in limine on the subject (T.p. 204, et. seq.). Consequently the court heard a statement Hunter made concerning these incidents. The issue also occurred later when the State questioned Dr. Makoroff about her records and knowledge of the 2004 injuries. The court admitted her testimony over the Defendant's objection (T.p. 290, et. seq.).

This Court decided this issue in *State v. Conway*, 109 Ohio St. 3d 412, 848 N.E. 2d 810, a capital-murder case where this Court held that admissibility of evidence under R. Evid. 404 (B) was a matter of discretion for the trial court. Short of an abuse of that discretion, the evidence is admissible. Short of disingenuity, however, Appellant cannot point to any obvious abuse on the trial court's part.

Since this evidentiary matter bears upon due process, a federal constitutional issue is at stake here. Therefore, Appellant wishes to preserve the

matter for federal review pursuant to *State v. Poindexter*, 36 Ohio St. 3d 1, 520 N.E. 2d 568 (1988).

**PROPOSITION OF LAW NO. 5**

**OHIO'S DEATH PENALTY LAW IS UNCONSTITUTIONAL. OHIO REV. CODE ANN. §§ 2903.01, 2929.02, 2929.021, 2929.022, 2929.023, 2929.03, 2929.04, AND 2929.05 DO NOT MEET THE PRESCRIBED CONSTITUTIONAL REQUIREMENTS AND ARE UNCONSTITUTIONAL. U.S. CONST. AMENDS. V, VI, VIII, AND XIV; OHIO CONST. ART. I, §§ 2, 9, 10, AND 16. FURTHER, OHIO'S DEATH PENALTY STATUTE VIOLATES THE UNITED STATES' OBLIGATIONS UNDER INTERNATIONAL LAW.**

The Eighth Amendment to the United States Constitution and Article I, § 9 of the Ohio Constitution prohibit cruel and unusual punishment. The Eighth Amendment's protections are applicable to the states through the Fourteenth Amendment. *Robinson v. California*, 370 U.S. 660 (1962). Punishment that is "excessive" constitutes cruel and unusual punishment. *Coker v. Georgia*, 433 U.S. 584 (1977). The underlying principle of governmental respect for human dignity is the Court's guideline to determine whether this statute is constitutional. See *Furman v. Georgia*, 408 U.S. 238 (1972) (Brennan, J., concurring); *Rhodes v. Chapman*, 452 U.S. 337, 361 (1981); *Trop v. Dulles*, 356 U.S. 86 (1958). The Ohio scheme offends this bedrock principle in the following ways:

**1. Arbitrary and unequal punishment.**

The Fourteenth Amendment's guarantee of equal protection requires similar treatment of similarly situated persons. This right extends to the protection against cruel and unusual punishment. *Furman*, 408 U.S. at 249 (Douglas, J., concurring). A death penalty imposed in violation of the Equal

Protection guarantee is a cruel and unusual punishment. *See Id.* Any arbitrary use of the death penalty also offends the Eighth Amendment. *Id.*

Ohio's capital punishment scheme allows the death penalty to be imposed in an arbitrary and discriminatory manner in violation of *Furman* and its progeny. Prosecutors' virtually uncontrolled indictment discretion allows arbitrary and discriminatory imposition of the death penalty. The United States Supreme Court deemed mandatory death penalty statutes fatally flawed because they lacked standards for imposition of a death sentence and therefore were removed from judicial review. *Woodson v. North Carolina*, 428 U.S. 280 (1976). Prosecutors' uncontrolled discretion violates this requirement.

Ohio's system also imposes death in a racially discriminatory manner. Blacks and those who kill white victims are much more likely to get the death penalty. While African-Americans are less than twenty percent of Ohio's population, 104 or fifty percent of Ohio's death row inmates in 2003 were African-American. *See Ohio Public Defender Commission Statistics*, Sept. 21, 2003; *see also The Report of the Ohio Commission on Racial Fairness*, 1999. While three Caucasians were sentenced to death for killing African-Americans, forty-eight African-Americans sat on Ohio's death row at that time for killing a Caucasian. *Ohio Public Defender Commission Statistics*, Sept. 21, 2003. Ohio's statistical disparity is tragically consistent with national findings. The General Accounting Office found victim's race influential at all stages, with stronger evidence involving prosecutorial discretion in charging and trying cases. *See Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*, U.S.

General Accounting Office, Report to Senate and House Committees on the Judiciary (February 1990).

Ohio courts have not evaluated the implications of these racial disparities. While the General assembly established a disparity appeals practice in post-conviction that may encourage the Ohio Supreme Court to adopt a rule requiring tracking the offender's race, O.R.C. § 2953.21 (A)(2), no rule has been adopted. Further, this practice does not track the victim's race and does not apply to crimes committed before July 1, 1996. In short, Ohio law fails to assure against race discrimination playing a role in capital sentencing.

Furthermore, Ohio's system imposes death in a geographically discriminatory manner. According to a study by the American Bar Association, the chance of getting a death sentence in Hamilton County is 2.7 times higher than in the rest of the state. Further, a convicted killer from the Cincinnati area is 3.7 times more likely to be sentenced to die than a convicted killer from the Cleveland and 6.2 times more likely than one from Columbus, the study found, Jon Craig and Sharon Coolidge, "Suspend Executions, Bar Group Urges Ohio," Cincinnati Enquirer, September 25, 2007.

Due process prohibits the taking of life unless the state can show a legitimate and compelling state interest. *Commonwealth v. O'Neal II*, 339 N.E. 2d 676, 678 (Mass. 1975) (Tauro, C.J., concurring); *Utah v. Pierre*, 572 P.2d 1338 (Utah 1977) (Maughan, J., concurring and dissenting). Moreover, where fundamental rights are involved personal liberties cannot be broadly stifled "when the end can be more narrowly achieved." *Shelton v. Tucker*, 364 U.S. 479 To

take a life by mandate, the State must show that it is the “least restrictive means” to a “compelling governmental end.” *O’Neal II*, 339 N.E. 2d at 678.

The death penalty is neither the least restrictive nor an effective means of deterrence. Both isolation of the offender and retribution can be served effectively by less restrictive means. Society’s interests do not justify the death penalty.

## **2. Unreliable sentencing procedures.**

The Due process and Equal Protection Clauses prohibit arbitrary and capricious procedures in the State’s application of capital punishment. *Gregg v. Georgia*, 428 U.S. 153, 188, 193-95 (1976); *Furman*, 408 U.S. at 255, 274. Ohio’s scheme does not meet those requirements. The statute does not require the State to prove the absence of any mitigating factors or that death is the only appropriate penalty.

The statutory scheme is unconstitutionally vague, which leads to the arbitrary imposition of the death penalty. The language “that the aggravating circumstances ... outweigh the mitigating factors” invites arbitrary and capricious jury decisions. “Outweigh” preserves reliance on the lesser standard of proof by a preponderance of the evidence. The statute requires only that the sentencing body be convinced beyond a reasonable doubt that the aggravating circumstances were marginally greater than the mitigating factors. This creates an unacceptable risk of arbitrary or capricious sentencing.

Additionally, the mitigating circumstances are vague. The jury must be given “specific and detailed guidance” and be provided with “clear and objective standards” for their sentencing discretion to be adequately channeled. *Godfrey v. Georgia*, 446 U.S. 420, (1980).

Ohio courts continually hold that the weighing process and the weight to be assigned to a given factor is within the individual decision-maker’s discretion. *State v. Fox*, 69 Ohio St. 3d 183, 193, 631 N.E. 2d 124, 132 (1994). Giving so much discretion to juries inevitably leads to arbitrary and capricious judgments. The Ohio open discretion scheme further risks that constitutionally relevant mitigating factors that must be considered as mitigating [youth or childhood abuse] (*Eddings v. Oklahoma*, 455 U.S. 104 (1982)), mental disease or defect (*Penry v. Lynaugh*, 492 U.S. 302 (1989)), level of involvement in the crime (*Enmund v. Florida*, 458 U.S. 782, (1982)), or lack of criminal history (*Delo v. Lashley*, 507 U.S. 272, (1993)) will not be factored into the sentencer’s decision. While the federal constitution may allow states to shape consideration of mitigation, *See Johnson v. Texas*, 509 U.S. 350, 113 S. Ct. 2658 (1993), Ohio’s capital scheme fails to provide adequate guidelines to sentencers, and fails to assure against arbitrary, capricious, and discriminatory results.

### **3. Mandatory submission of reports and evaluations.**

Ohio’s capital statutes are unconstitutional because they require submission of the presentence investigation report and the mental evaluation to the jury or judge once requested by a capital defendant. O.R.C. § 2929.03 (D)(1). This mandatory submission prevents defense counsel from giving effective

assistance and prevents the defendant from effectively presenting his case in mitigation.

**4. O.R.C. § 2929.04 (a)(7) is constitutionally invalid when used to aggravate O.R.C. § 2903.01(B) aggravated murder.**

“[T]o avoid [the] constitutional flaw of vagueness and overbreadth under the Eighth Amendment, an aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence of a defendant as compared to others found guilty of (aggravated) murder.” *Zant v. Stephens*, 462 U.S. 862, 877 (1983). Ohio’s statutory scheme fails to meet this constitutional requirement because O.R.C. § 2929.04 (A)(7) fails to genuinely narrow the class of individuals eligible for the death penalty.

O.R.C. § 2903.01 (B) defines the category of felony-murderers. If any factor listed in O.R.C. § 2929.04 (A) is specified in the indictment and proved beyond a reasonable doubt, the defendant becomes eligible for the death penalty. O.R.C. § 2929.02 (A) and 2929.03.

The scheme is unconstitutional because the O.R.C. § 2929.04 (A)(7) aggravating circumstances merely repeats, as an aggravating circumstance, factors that distinguish aggravated felony-murder from murder. O.R.C. § 2929.04 (A)(7) repeats the definition of felony-murder as alleged, which automatically qualifies the defendant for the death penalty. O.R.C. § 2929.04 (A)(7) does not reasonably justify the imposition of a more severe sentence on felony-murderers. But, the prosecuting attorney and the sentencing body are given unbounded discretion that maximizes the risk of arbitrary and capricious action and deprivation of a

defendant's life without substantial justification. The aggravating circumstance must therefore fail. *Zant*, 462 U.S. at 877.

As compared to other aggravated murderers, the felony-murderer is treated more severely. Each O.R.C. § 2929.04 (A) circumstance, when used in connection with O.R.C. § 2903.01 (A), adds an additional measure of culpability to an offender such that society arguably should be permitted to punish him more severely with death. But the aggravated murder defendant alleged to have killed during the course of a felony automatically eligible for the death penalty--not a single additional proof of fact is necessary.

The killer who kills with prior calculation and design is treated less severely, which is also nonsensical because his blameworthiness or moral guilt is higher, and the argued ability to deter him less. From a retributive stance, this is the most culpable of mental states. Comment, "The Constitutionality of Imposing the Death Penalty for Felony Murder", 15 *Hous. L. Rev.* 356, 375 (1978).

Felony-murder also fails to reasonably justify the death sentence because this Court has interpreted O.R.C. § 2929.04 (A)(7) as not requiring that intent to commit a felony precede the murder. *State v. Williams*, 74 Ohio St. 3d 569, 660 N.E. 2d 724, syl. 2 (1996). The asserted state interest in treating felony-murder as deserving of greater punishment is to deter the commission of felonies in which individuals may die. Generally courts have required that the killing result from an act done in furtherance of the felonious purpose. *Id.*, referencing the Model Penal Code. Without such a limitation, no state interest justifies a stiffer punishment. This Court has discarded the only arguably reasonable justification for the death

sentence to be imposed on such individuals, a position that engenders constitutional violations. *Zant*, 462 U.S. 862. Further, this Court's current position is inconsistent with previous cases, thus creating the likelihood of arbitrary and inconsistent applications of the death penalty. *See e.g., State v. Rojas*, 64 Ohio St. 3d 131, 592 N.E. 2d 1376 (1992).

Equal protection of the law requires that legislative classifications be supported by, at least, a reasonable relationship to legitimate State interests. *Skinner v. Oklahoma*, 316 U.S. 535, (1942). The State has selected arbitrarily one class of murderers who may be subjected to the death penalty automatically. This statutory scheme is inconsistent with the purported State interests. The most brutal, cold-blooded and premeditated murderers do not fall within the types of murder that are eligible automatically for the death penalty. There is no rational basis or any State interest for this distinction and its application is arbitrary and capricious.

**5. Proportionality and appropriateness review.**

Ohio Revised Code §§ 2929.021 and 2929.03 require data be reported to the courts of appeals and to the Supreme Court of Ohio. There are substantial doubts as to the adequacy of the information received after guilty pleas to lesser offenses or after charge reductions at trial. O.R.C. § 2929.021 requires only minimal information on these cases. Additional data is necessary to make an adequate comparison in these cases. This prohibits adequate appellate review.

Adequate appellate review is a precondition to the constitutionality of a state death penalty system. *Zant*, 462 U.S. at 879; *Pulley v. Harris*, 465 U.S. 37

(1984). The standard for review is one of careful scrutiny. *Zant*, 462 U.S. at 884-85. Review must be based on a comparison of similar cases and ultimately must focus on the character of the individual and the circumstances of the crime. *Id.*

Ohio's statutes' failure to require the jury or three-judge panel recommending life imprisonment to identify the mitigating factors undercuts adequate appellate review. Without this information, no significant comparison of cases is possible. Without a significant comparison of cases, there can be no meaningful appellate review. *See State v. Murphy*, 91 Ohio St. 3d 516, 562, 747 N.E. 2d 765, 813 (2001) (Pfeifer, J., dissenting) ("When we compare a case in which the death penalty was imposed only to other cases in which the death penalty was imposed, we continually lower the bar of proportionality. The lowest common denominator becomes the standard.")

The comparison method also is constitutionally flawed. Review of cases where the death penalty was imposed satisfies the proportionality review required by O.R.C. § 2929.05 (A). *State v. Steffen*, 31 Ohio St. 3d 111, 509 N.E. 2d 383, syl. 1 (1987). However, this prevents a fair proportionality review. There is no meaningful manner to distinguish capital defendants who deserve the death penalty from those who do not.

This Court's appropriateness analysis is also constitutionally infirm. O.R.C. § 2929.05 (A) requires appellate courts to determine the appropriateness of the death penalty in each case. The statute directs that the death penalty be affirmed only where the court is persuaded that the aggravating circumstances outweigh the mitigating factors and that death is the appropriate sentence. *Id.*

This Court has not followed these dictates. The appropriateness review conducted is very cursory. It does not “rationally distinguish between those individuals for whom death is an appropriate sanction and those for whom it is not.” *Spanziano v. Florida*, 468 U.S. 447, 460, (1984).

The cursory appropriateness review also violates the capital appellant’s due process rights as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution. The General Assembly provided capital appellants with the statutory right of proportionality review. When a state acts with significant discretion, it must act in accordance with the Due Process Clause. *Evitts v. Lucey*, 469 U.S. 387, 401, (1985). The review currently used violates this constitutional mandate. An insufficient proportionality review violates Lamont Hunter’s due process, liberty interest in O.R.C. § 2929.05.

**6. Lethal injection is cruel and unusual punishment.**

Ohio Revised Code § 2949.22 (A) provides that death by lethal injection “shall be executed by causing the application to the person of a lethal injection drug or combination of drugs of sufficient dosage to quickly and painlessly cause death[.]” This mode of punishment offends not only contemporary standards of decency *Trop v. Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590 (1958), but does not necessarily “quickly and painlessly cause death” as the statute mandates. Despite ostensible settlement by the nation’s highest court, the issue still lingers in Ohio. In *Baze v. Rees*, 128 S. Ct. 1520 (2008), the United States Supreme Court held that Kentucky’s lethal injection protocol did not violate the Eighth Amendment because it does not create a substantial risk of wanton and unnecessary infliction

of pain, torture, or lingering death. However, when the Supreme Court made its decision, it had the benefit of findings of fact as to the three-drug protocol. No such thing has been in this case or, for that matter, determined in any other Ohio case. Furthermore, prior to *Baze*, supra, only one prisoner had been executed by lethal injection in Kentucky, hence a very slim opportunity to encounter the pitfalls of this method of execution. *Id.* at 1569. Therefore, we cannot tell if lethal injection in Ohio meets the *Baze* standard.

Indeed, Ohio's broader experience with lethal injection leads us to question its humanness. On May 2, 2006, the State of Ohio proceeded to execute Joseph Lewis Clark. Prison personnel had to work for 25 minutes to find usable veins in both arms to attach the intravenous tubes, but the execution team could not find an appropriate vein in his right arm. They just went ahead with one in the left. Clark did not fall asleep from the first drug as he was supposed to, but instead, he raised his head from the gurney, repeatedly shook it, and loudly proclaimed, "It don't work!" five times. Clark moaned and groaned. Jim Provance and Christina Hall, "Clark Execution Raises Lethal Injection Issues," Toledo Blade, May 4, 2006. The execution resumed about 40 minutes later after another vein was found. Erica Ryan, "Botched Execution Fires Up Opponents of Death Penalty," Columbus Dispatch, May 4, 2006. Shortly thereafter, Ohio Department of Rehabilitation and Correction Director Terry J. Collins called for revisions in the lethal-injection protocol.

These changes include giving the staff more time to perform the execution, performing a "hands on" evaluation of the inmate prior to execution, and using a continuous IV infusion from a bag of saline rather than a syringe.

In response to these changes, Jonathan I. Groner MD, Associate Professor of Surgery at the Ohio State University College of Medicine and Public Health, and national expert on lethal injection, issued the following statement:

“The changes proposed by Director Collins are only cosmetic. Joseph Clark was tormented by multiple needle sticks and then executed not once but twice because the individuals involved in his execution were poorly trained and not capable of obtaining proper access to Mr. Clark’s veins. Giving the prison staff unlimited time to probe an inmate’s arms and legs with needles amounts to ‘needle torture.’ Performing a ‘hands on’ evaluation, insisting on two IVs and using saline bags rather than syringes will not solve the fundamental problem that unqualified personnel are attempting to perform what is essentially a medical procedure. Future executions are also likely to go awry.”

Press Release of Jonathan I. Groner, M.D, June 29, 2006.

Lethal injection causes unnecessary pain. See Marian J. Borg and Michael Radelet, “Botched Lethal Injections”, 53 Capital Report, March/April 1998; Kathy Sawyer, “Protracted Execution In Texas Draws Criticism: Lethal Injection Delayed by Search for Vein”, Washington Post, March 14, 1985; “Killer Lends a Hand to Find Vein for Execution”, LA Times, August 20, 1986; “Killer’s Drug Abuse Complicates Execution”, Chicago Tribune, April 24, 1992; “Murderer Executed After a Leaky Lethal Injection”, New York Times, December 14, 1988; “Rector’s Time Came, Painfully Late”, Arkansas Democrat Gazette, January 26, 1992; “Gacy Lawyers Blast Method: Lethal Injections Under Fire after Equipment Malfunction”, Chicago Sun-Times, May 11, 1994; Lou Ortiz and Scott Fornek “Witnesses Describe Killer’s ‘Macabre’ Final Few Moment”, Chicago Sun-Times, May 11, 1994; Cf. *Gregg v. Georgia*, 428 U.S. 153, 173

(1976) (Eighth Amendment proscribes “the unnecessary and wanton infliction of pain.”)

Other prisoners like Clark have been stuck repeatedly with a needle for almost an hour in an effort to find a vein suitable for use. Marian J. Borg and Michael Radelet, “Botched Lethal Injections”, 53 Capital Report, March/April 1998; “Murderer of Three Women is executed in Texas”, NY Times, March 14, 1985; Kathy Sawyer, “Protracted Execution In Texas Draws Criticism: Lethal Injection Delayed by Search for Vein”, Washington Post, March 14, 1985; “Killer’s Drug Abuse Complicates Execution”, Chicago Tribune, April 24, 1992; “Rector’s Time Came, Painfully Late”, Arkansas Democrat Gazette, January 26, 1992. Prisoners have actually had to assist technicians in finding a vein suitable to use. “Killer Lends a Hand to Find Vein for Execution”, LA Times, August 20, 1986; “Moans Pierced Silence During Wait”, Arkansas Democrat Gazette, January 26, 1992. There can be dosage miscalculations or errors. In Missouri, a doctor who was involved in dozens of execution was quoted recently as saying he was dyslexic and occasionally altered the amounts of anesthetic given. Ron Word (Associated Press), “No Cruel or Unusual Punishments: Can Lethal Injection Ever Meet the Constitutional Standard?”, Cincinnati Enquirer, October 6, 2007.

Equipment failures are not uncommon. “Murderer Executed After a Leaky Lethal Injection”, New York Times, December 14, 1988; Marian J. Borg and Michael Radelet, “Botched Lethal Injections”, 53 Capital Report, March/April 1998. Gasping and choking from the prisoner is not uncommon. Id. Because the prisoner is restrained and paralyzed there may be no reaction to the

**7.2.2 Ohio's statutory scheme violates the ICCPR's protection against arbitrary execution.**

The ICCPR speaks explicitly to the use of the death penalty. The ICCPR guarantees the right to life and provides that there shall be no arbitrary deprivation of life. Art. 6(1). It allows the imposition of the death penalty only for the most serious offenses. Art. 6(2). Juveniles and pregnant women are protected from the death penalty. Art. 6(5). Moreover, the ICCPR contemplates the abolition of the death penalty. Art. 6(6).

However, several aspects of Ohio's statutory scheme allow for the arbitrary deprivation of life. Punishment is arbitrary and unequal. (See discussion supra § 1). Ohio's sentencing procedures are unreliable. (See discussion supra § 2). Ohio's statutory scheme lacks individualized sentencing. (See discussion supra § 1, 2). The (A)(7) aggravator maximizes the risk of arbitrary and capricious action by singling out one class of murders who may be eligible automatically for the death penalty. (See discussion supra § 5). The vagueness of O.R.C. §§ 2929.03 (D)(1) and 2929.04 similarly render sentencing arbitrary and unreliable. (See discussion supra § 6). Ohio's proportionality and appropriateness review fails to distinguish those who deserve death from those who do not. (See discussion supra § 7). As a result, executions in Ohio result in the arbitrary deprivation of life and thus violate the ICCPR's death penalty protections. This is a direct violation of international law and a violation of the Supremacy Clause of the United States Constitution.

include numerous considerations: a fair hearing (Art. 14(1)), an independent and impartial tribunal (Art. 14(1)), the presumption of innocence (Art. 14(2)), adequate time and facilities for the preparation of a defense (Art. 14(3)(a)), legal assistance (Art. 14 (3)(d)), the opportunity to call and question witnesses (Art. 14(3)(e)), the protection against self-incrimination (Art. 14(3)(g)), and the protection against double jeopardy (Art. 14(7)). However, Ohio's statutory scheme fails to provide equal protection and due process to capital defendants as contemplated by the ICCPR and the ICERD.

Ohio's statutory scheme denies equal protection and due process in several ways. It allows for arbitrary and unequal treatment in punishment. (See discussion supra § 1). Ohio's sentencing procedures are unreliable. (See discussion supra § 2). Ohio's statutory scheme fails to provide individualized sentencing. (See discussion supra § 1, 2). Ohio's statutory scheme burdens a defendant's right to a jury. (See discussion supra § 3). Ohio's requirement of mandatory submission of reports and evaluations precludes effective assistance of counsel. (See discussion supra § 4). O.R.C. § 2929.04 (B)(7) arbitrarily selects certain defendant who may be automatically eligible for death upon conviction. (See discussion supra § 5). Ohio's proportionality and appropriateness review is wholly inadequate. (See discussion supra § 7). As a result, Ohio's statutory scheme violates the ICCPR's and the ICERD's guarantees of equal protection and due process. This is a direct violation of international law and of the Supremacy Clause of the United States Constitution.

obligations incurred through ratification. President Clinton reiterated the United States' need to fulfill its obligations under these conventions when he issued Executive Order 13107. In pertinent part, the Executive Order states:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), the Convention on the Elimination on All Forms of Racial Discrimination (CERD), and other relevant treaties concerned with the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

#### **Section 1. Implementation of Human Rights Obligations.**

- (a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.

Ohio is not fulfilling the United States' obligations under these conventions. Rather, Ohio's death penalty scheme violates each convention's requirements and thus must yield to the requirements of international law. (See discussion above).

#### **7.2.1 Ohio's statutory scheme violates the ICCPR's and ICERD's guarantees of equal protection and due process.**

Both the ICCPR, ratified in 1992, and the ICERD, ratified in 1994, guarantee equal protection of the law. ICCPR Art. 2(1), 3, 14, 26; ICERD Art. 5(a). The ICCPR further guarantees due process via Articles 9 and 14, which

United States citizens. *Filartiga v. Pena-Irala*, 630 F. 2d 876 (2<sup>nd</sup> Cir. 1980);  
*Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987).

## **7.2 Ohio's obligations under international charters, treaties, and conventions.**

The United States' membership and participation in the United Nations (U.N.) and the Organization of American State (OAS) creates obligations in all fifty states. Through the U.N. Charter, the United States committed itself to promote and encourage respect for human rights and fundamental freedoms. Art. 1(3). The United States bound itself to promote human rights in cooperation with the United Nations. Art. 55-56. The United States again proclaimed the fundamental rights of the individual when it became a member of the OAS. OAS Charter, Art. 3.

The U.N. has sought to achieve its goal of promoting human rights and fundamental freedoms through the creation of numerous treaties and conventions. The United States has ratified several of these including: the *International Covenant on Civil and Political Rights (ICCPR)* ratified in 1992, the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)* ratified in 1994, and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)* ratified in 1994. Ratification of these treaties by the United States expressed its willingness to be bound by these treaties. Pursuant to the Supremacy Clause, the ICCPR, the ICERD, and the CAT are the supreme laws of the land. As such, the United States must fulfill the

pain felt, but death by lethal injection is not painless. Rather, it is cruel and unusual punishment prohibited under the Eighth Amendment to the United States Constitution, the ICCPR, and the CAT. Lethal injection also violates the United States' obligations under the International Convention on Civil and Political Rights (1992) (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1994) (CAT).

**7. Ohio's statutory death penalty scheme violates international law.**

International law binds each of the states that comprise the United States. Ohio is bound by international law whether found in treaty or in custom. Because the Ohio death penalty scheme violates international law, Newton's capital convictions and sentences cannot stand.

**7.1 International law binds the State of Ohio.**

"International law is a part of our law[.]" *The Paquete Habana*, 175 U.S.

**7.2.3 Ohio's statutory scheme violates the ICERD's protections against race discrimination.**

The ICERD, speaking to racial discrimination, requires that each state take affirmative steps to end race discrimination at all levels. Art. 2. It requires specific action and does not allow states to sit idly by when confronted with practices that are racially discriminatory. However, Ohio's statutory scheme imposes the death penalty in a racially discriminatory manner. (See discussion supra § 1). A scheme that sentences blacks and those who kill white victims more frequently and which disproportionately places African-Americans on death row is in clear violation of the ICERD. Ohio's failure to rectify this discrimination is a direct violation of international law and of the Supremacy Clause of the United States Constitution.

**7.2.4 Ohio's statutory scheme violates the ICCPR's and the CAT's prohibitions against cruel, inhuman or degrading punishment.**

The ICCPR prohibits subjecting any person to torture or to cruel, inhuman, or degrading treatment or punishment. Art. 7. Similarly, the CAT requires that states take action to prevent torture, which includes any act by which severe mental or physical pain is intentionally inflicted on a person for the purpose of punishing him for an act committed. See Art. 1-2. As administered, Ohio's death penalty inflicts unnecessary pain and suffering, see discussion supra § 8, in violation of both the ICCPR and the CAT. Thus, there is a violation of international law and the Supremacy Clause of the United States Constitution.

**7.2.5 Ohio's obligations under the ICCPR, the ICERD, and the CAT are not limited by the reservations and conditions placed on these conventions by the Senate.**

While conditions, reservations, and understandings accompanied the United States' ratification of the ICCPR, the ICERD, and the CAT, those conditions, reservations, and understandings cannot stand for two reasons. Article 2 § 2 of the United States Constitution provides for the advice and consent of two-thirds of the Senate when a treaty is adopted. However, the United States Constitution makes no provision for the Senate to modify, condition, or make reservations to treaties. The Senate is not given the power to determine what aspects of a treaty the United States will and will not follow. Their role is to simply advise and consent.

Thus, the Senate's inclusion of conditions and reservations in treaties goes beyond that role of advice and consent. The Senate picks and chooses which items of a treaty will bind the United States and which will not. This is equivalent of the line-item veto, which is unconstitutional. *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). The United States Supreme Court specifically spoke to the enumeration of the President's powers in the Constitution in finding that the president did not possess the power to issue line item vetoes. *Id.* If it is not listed, then the President lacks the power to do it. *See Id.* Similarly, the Constitution does not give the power to the Senate to make conditions and reservations, picking and choosing what aspects of a treaty will become law. Thus, the Senate lacks the power to do just that. Therefore, any conditions or reservations made by the Senate are unconstitutional. *See Id.*

The Vienna Convention on the Law of treaties further restricts the Senate's imposition of reservations. It allows reservations except under certain

circumstances, for example, they are prohibited by the treaty, the treaty provides that only specified reservations, not including the reservation in question, may be made, or the reservation is incompatible with the object and purpose of the treaty. Art. 19(a)-(c). The ICCPR specifically precludes derogation of Articles 6-8, 11, 15-16, and 18. Pursuant to the Vienna Convention, the United States' reservations to these articles are invalid under the language of the treaty. *See Id.* Further, it is the purpose of the ICCPR to protect the right to life and any reservation inconsistent with that purpose violates the Vienna Convention. Thus, United States reservations cannot stand under the Vienna Convention as well.

**7.2.6 Ohio's obligations under the ICCPR are not limited by the Senate's declaration that it is not self-executing.**

The Senate indicated that the ICCPR is not self-executing. However, the question of whether a treaty is self-executing is left to the judiciary. *Frolova v. Union of Soviet Socialist Republics*, 761 F. 2d 370 (7<sup>th</sup> Cir. 1985) (Restatement (Second) of Foreign Relations Law of the United States, Sec. 154(1) (1965)). It is the function of the courts to say what the law is. *See Marbury v. Madison*, 5 U.S. 137 (1803).

Further, requiring the passage of legislation to implement a treaty necessarily implicates the participation of the House of Representatives. By requiring legislation to implement a treaty, the House can effectively veto a treaty by refusing to pass the necessary legislation. However, Article 2, § 2 excludes the House of Representatives from the treaty process. Therefore, declaring a treaty to be not self-executing gives power to the House of Representatives not

contemplated by the United States Constitution. Thus, any declaration that a treaty is not self-executing is unconstitutional. *See Clinton*, 524 U.S. at 438.

### 7.3 Ohio's obligations under customary international law.

International law is not merely discerned in treaties, conventions and covenants. International law "may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decision recognizing and enforcing that law." *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-61 (1820). Regardless of the source "international law is a part of our law[.]" *The Paquete Habana*, 75 U.S. at 700.

The judiciary and commentators recognize the Universal Declaration of Human Rights (DHR) as binding international law. The DHR "no longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement,' but is rather an authoritative statement of the international community." *Filartiga*, 630 F. 2d at 883 (internal citations omitted); *see also* William A Schabas, "The Death Penalty as Cruel Treatment and Torture" (1996).

The DHR guarantees equal protection and due process (Art. 1, 2, 7, 11), recognizes the right to life (Art. 3), prohibits the use of torture or cruel, inhumane or degrading punishment (Art. 5) and is largely reminiscent of the ICCPR. Each of the guarantees found in the DHR are violated by Ohio's statutory scheme. (See discussion *supra* §§ 1-8). Thus, Ohio's statutory scheme violates customary international law as codified in the DHR and cannot stand.

However, the DHR is not alone in its codification of customary international law. *Smith* directs the courts to look to "the works of jurists, writing

professedly on public law; or by the general usage and practice of nations; or by judicial decision recognizing and enforcing that law” in ascertaining international law. *Smith* at 160-61. Ohio should be cognizant of the fact that its statutory scheme violates numerous declarations and conventions drafted and adopted by the U.N. and the OAS, which may, because of the sheer number of countries that subscribe to them, codify customary international law. *See Id.* Included among these are:

1. The American Convention on Human Rights, drafted by the OAS and entered into force in 1978. It provides numerous human rights guarantees, including: equal protection (Art. 1, 24), the right to life, (Art. 4(1)), prohibition against arbitrary deprivation of life (Art. 4(1)), imposition of the death penalty only for the most serious crimes (Art. 4(2)), no re-establishment of the death penalty once abolished (Art. 4(3)), prohibits torture, cruel, inhuman or degrading punishment (Art. 5(2)), and guarantees the right to a fair trial (Art. 8).

2. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination proclaimed by U.N. General Assembly resolution 1904 (XVIII) in 1963. It prohibits racial discrimination and requires that states take affirmative action in ending racial discrimination.

3. The American Declaration of the Rights and Duties of Man adopted by the Ninth International Conference of American States in 1948. It includes numerous human rights guarantees: the right to life (Art. 1), equality before the law (Art. 2), the right to a fair trial (Art. 16), and due process (Art. 26).

4. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the U.N. General Assembly in Resolution 3452 (XXX) in 1975. It prohibits torture, defined to include severe mental or physical pain intentionally inflicted by or at the instigation of a public official for a purpose including punishing him for an act he has committed, and requires that the states take action to prevent such actions. Art. 1, 4.

5. Safeguards Guaranteeing Protection of the rights of Those Facing the Death Penalty adopted by the U.N. Economic and Social Council in Resolution 1984/50 in 1984. It provides numerous protections to those facing the death penalty, including: permitting capital punishment for only the most serious crimes, with the scope not going beyond intentional crimes with lethal or other extremely grave consequences (1), requiring that guilt be proved so as to leave no room for an alternative explanation of the facts (4), due process, and the carrying out of the death penalty so as to inflict the minimum possible suffering (9).

6. The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, adopted and proclaimed by the U.N. General Assembly in Resolution 44/128 in 1989. This prohibits execution (Art. 1(1)) and requires that states abolish the death penalty (Art. 1(2)).

These documents are drafted by the people *Smith* contemplates and are subscribed to by a substantial segment of the world. As such they are binding on the United States as customary international law. A comparison of the §§ 1-9

circumstances, for example, they are prohibited by the treaty, the treaty provides that only specified reservations, not including the reservation in question, may be made, or the reservation is incompatible with the object and purpose of the treaty. Art. 19(a)-(c). The ICCPR specifically precludes derogation of Articles 6-8, 11, 15-16, and 18. Pursuant to the Vienna Convention, the United States' reservations to these articles are invalid under the language of the treaty. *See Id.* Further, it is the purpose of the ICCPR to protect the right to life and any reservation inconsistent with that purpose violates the Vienna Convention. Thus, United States reservations cannot stand under the Vienna Convention as well.

**7.2.6 Ohio's obligations under the ICCPR are not limited by the Senate's declaration that it is not self-executing.**

The Senate indicated that the ICCPR is not self-executing. However, the question of whether a treaty is self-executing is left to the judiciary. *Frolova v. Union of Soviet Socialist Republics*, 761 F. 2d 370 (7<sup>th</sup> Cir. 1985) (Restatement (Second) of Foreign Relations Law of the United States, Sec. 154(1) (1965)). It is the function of the courts to say what the law is. *See Marbury v. Madison*, 5 U.S. 137 (1803).

Further, requiring the passage of legislation to implement a treaty necessarily implicates the participation of the House of Representatives. By requiring legislation to implement a treaty, the House can effectively veto a treaty by refusing to pass the necessary legislation. However, Article 2, § 2 excludes the House of Representatives from the treaty process. Therefore, declaring a treaty to be not self-executing gives power to the House of Representatives not

contemplated by the United States Constitution. Thus, any declaration that a treaty is not self-executing is unconstitutional. See *Clinton*, 524 U.S. at 438.

### 7.3 Ohio's obligations under customary international law.

International law is not merely discerned in treaties, conventions and covenants. International law "may be ascertained by consulting the works of jurists, writing professedly on public law; or by the general usage and practice of nations; or by judicial decision recognizing and enforcing that law." *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-61 (1820). Regardless of the source "international law is a part of our law[.]" *The Paquete Habana*, 75 U.S. at 700.

The judiciary and commentators recognize the Universal Declaration of Human Rights (DHR) as binding international law. The DHR "no longer fits into the dichotomy of 'binding treaty' against 'non-binding pronouncement,' but is rather an authoritative statement of the international community." *Filartiga*, 630 F. 2d at 883 (internal citations omitted); see also William A Schabas, "The Death Penalty as Cruel Treatment and Torture" (1996).

The DHR guarantees equal protection and due process (Art. 1, 2, 7, 11), recognizes the right to life (Art. 3), prohibits the use of torture or cruel, inhumane or degrading punishment (Art. 5) and is largely reminiscent of the ICCPR. Each of the guarantees found in the DHR are violated by Ohio's statutory scheme. (See discussion supra §§ 1-8). Thus, Ohio's statutory scheme violates customary international law as codified in the DHR and cannot stand.

However, the DHR is not alone in its codification of customary international law. *Smith* directs the courts to look to "the works of jurists, writing

professedly on public law; or by the general usage and practice of nations; or by judicial decision recognizing and enforcing that law” in ascertaining international law. *Smith* at 160-61. Ohio should be cognizant of the fact that its statutory scheme violates numerous declarations and conventions drafted and adopted by the U.N. and the OAS, which may, because of the sheer number of countries that subscribe to them, codify customary international law. *See Id.* Included among these are:

1. The American Convention on Human Rights, drafted by the OAS and entered into force in 1978. It provides numerous human rights guarantees, including: equal protection (Art. 1, 24), the right to life, (Art. 4(1)), prohibition against arbitrary deprivation of life (Art. 4(1)), imposition of the death penalty only for the most serious crimes (Art. 4(2)), no re-establishment of the death penalty once abolished (Art. 4(3)), prohibits torture, cruel, inhuman or degrading punishment (Art. 5(2)), and guarantees the right to a fair trial (Art. 8).

2. The United Nations Declaration on the Elimination of All Forms of Racial Discrimination proclaimed by U.N. General Assembly resolution 1904 (XVIII) in 1963. It prohibits racial discrimination and requires that states take affirmative action in ending racial discrimination.

3. The American Declaration of the Rights and Duties of Man adopted by the Ninth International Conference of American States in 1948. It includes numerous human rights guarantees: the right to life (Art. 1), equality before the law (Art. 2), the right to a fair trial (Art. 16), and due process (Art. 26).

4. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the U.N. General Assembly in Resolution 3452 (XXX) in 1975. It prohibits torture, defined to include severe mental or physical pain intentionally inflicted by or at the instigation of a public official for a purpose including punishing him for an act he has committed, and requires that the states take action to prevent such actions. Art. 1, 4.

5. Safeguards Guaranteeing Protection of the rights of Those Facing the Death Penalty adopted by the U.N. Economic and Social Council in Resolution 1984/50 in 1984. It provides numerous protections to those facing the death penalty, including: permitting capital punishment for only the most serious crimes, with the scope not going beyond intentional crimes with lethal or other extremely grave consequences (1), requiring that guilt be proved so as to leave no room for an alternative explanation of the facts (4), due process, and the carrying out of the death penalty so as to inflict the minimum possible suffering (9).

6. The Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, adopted and proclaimed by the U.N. General Assembly in Resolution 44/128 in 1989. This prohibits execution (Art. 1(1)) and requires that states abolish the death penalty (Art. 1(2)).

These documents are drafted by the people *Smith* contemplates and are subscribed to by a substantial segment of the world. As such they are binding on the United States as customary international law. A comparison of the §§ 1-9

clearly demonstrates that Ohio's statutory scheme is in violation of customary international law.

## **8. Conclusion**

Ohio's death penalty scheme fails to ensure that arbitrary and discriminatory imposition of the death penalty will not occur. The procedures actually promote the imposition of the death penalty and, thus, are constitutionally intolerable. Ohio Revised Code §§ 2903.21, 2929.02, 2929.021, 2929.022, 2929.023, 2929.04, and 2929.05 violate the Fifth, Sixth, Eighth and XIV Amendments to the United States Constitution and Article I, §§ 2, 9, 10, and 16 of the Ohio Constitution and international law. Hunter's death sentence must be vacated.<sup>4</sup>

## **PROPOSITION OF LAW 6**

**The trial court rendered an improper sentence when it ordered the prison terms on the non-capital offenses to run consecutive to the death sentence in violation of federal and state constitutional rights. U.S. Const. Amend. XIII & XIV, Ohio Const., Art. 1 § 9.**

1. The life sentence for rape and the eight-year sentence for child endangering cannot run consecutively to the death sentence.

---

<sup>4</sup> In *State v. Jenkins*, 15 Ohio St. 3d 164, 14 N.E. 2d 264 (1984), this Court upheld this death penalty statute and this Court may, therefore, reject this claim on its merits if it disagrees with Appellant's federal constitutional arguments. *State v. Poindexter*, 36 Ohio St. 3d 1, 520 N.E. 2d 568 (1988).

Lamont Hunter was sentenced to death on the aggravated murder charge, life without parole on the rape charge, and to eight years in prison on the child endangering charge (T.d. 401, T.p. 832-838). While the judgment entry does not state the specific order of the consecutive sentences, the trial court did elaborate upon that and indicate that the non-capital sentences were to be served after the death sentence (T.p. 834). Moreover, the likelihood is that the Department of Rehabilitation and Correction will treat it as such.

However, in *State v. Campbell*, Ohio St. 3d 38, 630 N.E. 2d 339 (1994), this Court held that there was no error in such a practice, and that the issue was moot. However, Appellant believes that this Court would not smile upon that approach, and may believe concurrent sentences would be more sensible.

Lamont Hunter's sentence is illegal, and his case should at the very least be remanded for resentencing.

#### PROPOSITION OF LAW NO. 7

**Where the trial court wrongfully denies multiple written defense motions, the cumulative effect of these denials constitutes abuse of discretion and is therefore tantamount to reversible error.**

- 1. The trial court's denial of the appellant's multiple discovery-related objections, while individually harmless error, in totality reaches the threshold of reversible error.**

On April 14, 2006, the appellant submitted motions to the trial court requesting both the State's disclosure of rebuttal witnesses and an order directing that a complete copy of the prosecutor's file be made and turned over to the court for review and to be sealed for appellate review, if necessary. The trial court denied these motions.

The trial court's denial of these motions was procedurally unsound. First, in *State v. Finnerty*, the Ohio Supreme Court ruled that "[r]ebuttal witnesses, as well as witnesses used in the prosecution's case-in-chief, fall within the scope of discovery....[t]hus, if the prosecution does not provide the name of a rebuttal witness upon a defendant's request for such information, the trial court may impose sanctions on the prosecution." *State v. Finnerty* (1989) 45 Ohio St. 3d 104, 106-107; 543 N.E. 2d 1233, 1236. In the case at bar, the trial court not only failed to sanction the prosecution but also denied the appellant's request for information previously ruled discoverable by the Ohio Supreme Court. Therefore, the trial court's ruling on this motion was erroneous as it failed to comply with Ohio Supreme Court rulings.

Next, in *State v. Brown*, the Ohio Supreme Court rules on a case in which the defense moved for both discovery and the sealing of the prosecutor's file for appellate review. There were three (3) police reports that the State failed to provide the defense; these three (3) failures constituted error. *See State v. Brown* (2007), 115 Ohio St. 3d 55, 62-66; 873 N.E. 2d 858, 866-868. Specifically, the *Brown* Court wrote that "[t]hese undisclosed police reports ultimately put the reliability of the verdict in question." *Id.* at 64, 873 N.E. 2d 858, 867. In the case at bar, the trial court's failure to order the State to produce the State's file for defense discovery may have made a substantial difference in the defense's trial preparation. Since the defense requested all discoverable evidence but was thwarted by the trial court's denial of same, the trial court again erred to the prejudice of the appellant. *See also State v. Green* (2000), 90 Ohio St. 3d 362, 364-365; 738 N.E. 1208, 1224-1225.

The trial court's denials here combine to disallow discovery materials necessary for a diligent defense, especially in a death-penalty case. Therefore, the Court should reverse the defendant's conviction,

2. **The trial court's denial of the appellant's procedural objections, while individually harmless error, in totality reaches the threshold of reversible error.**

On April 14, 2006, the defense submitted a Motion in Limine to the trial court requesting that the trial court prohibit victim-impact evidence during the trial and, if necessary, the mitigation phase; the trial court denied this motion.

The denial of these motions was procedurally unsound. First, in *State v. Post*, the Ohio Supreme Court affirmed its earlier rulings on victim impact evidence in a capital case. Specifically, the Court wrote that "[t]he use by the state of evidence of the victim's background, and reliance upon such evidence in its argument for the death penalty, is improper and constitutes error, but while such error may be cause for reversal because of its prejudicial effect on a jury, it must affirmatively appear that in a bench trial the court relied on such testimony in arriving at its verdict in order for such error to be ground for reversal." *State v. Post* (1987), 32 Ohio St. 3d 380, 384; 513 N.E. 2d 754, 759 citing *State v. White* (1968), 15 Ohio St. 2d 146, 239 N.E. 2d 65. See also *State v. Fautenberry* (1995), 72 Ohio St. 3d 435, 438-441; 650 N.E. 2d 878, 881-882. In the case at bar, it is a question of law whether the trial court employed victim impact statements in deciding the appellant's case.

3. **The trial court's denial of the appellant's request for a full transcription of the Grand Jury Proceedings and for an order that the State disclose names of Grand Jury witnesses, while individually harmless error, in totality with the above-noted errors reaches the threshold of reversible error.**

On April 14, 2006, the defense submitted motions requesting disclosure of the Grand Jury Transcript and the names of the Grand Jury witnesses; the trial court denied these motions.

The denial of these motions was procedurally unsound. Specifically, the case at bar distinguished from such Ohio Supreme Court cases as *State v. Treesh*. In *Treesh*, the Ohio Supreme Court reiterated its finding on the discoverability of grand jury testimony. The Court wrote that grand jury testimony is undiscoverable “unless the ends of justice require it and there is a showing by defense that a *particularized need* for disclosure exists which outweighs the need for secrecy’ ...’[w]hether particularized need for disclosure of grand jury testimony is a question of fact;”. *State v. Treesh* (2001), 90 Ohio St. 3d 460, 476-477; 739 N.E. 2d 749, 768-769 citing *State v. Greer* (1981), 66 Ohio St. 2d 139, 420 N.E. 2d 982, paragraphs two and three of the syllabus. In the case at bar, the appellant had a particularized need for such disclosure. The appellant acknowledges that a capital murder proceeding alone does not demonstrate particularized need. *Id.* at 477, 739 N.E. 2d 749, 769. However, an inability to counter assertions by grand jury witnesses is a crucial blow to a defense in that here, appellant could not fully confront his accusers. *See also State v. Stojetz* (1999), 84 Ohio St. 3d 452, 459-460; 705 N.E. 2d 329, 337-338 (distinguished from the case at bar in that the appellant’s need for the Grand Jury transcript is not rooted in speculation). Therefore, the trial court’s error here combines with those noted above to create reversible error, requiring a reversal of the appellant’s conviction.

4. Where the trial court denies multiple defense motions the cumulative effect of these denials constitutes abuse of discretion and is therefore tantamount to reversible

error. If the Court has previously ruled on the issues contained in these motions, the appellant may object for the record pursuant to the Ohio Supreme Court's ruling in *State v. Poindexter*.

Background Information: Appellant, pursuant to *State v. Poindexter*, herein objects to the following motions that the trial court denied. Appellant submits that while individually harmless error, in totality with the above-noted errors, these denials reach the threshold of reversible error.

The Appellant hereby objects the trial court's denial of the following motions:

1. Defendant's Motion to Allow the Defense to Argue Last at the Mitigation Phase (T.d. 50).
2. Defendant's Motion in Limine to Prohibit Reference to the Nature and Circumstances of the Offense as a Factor to be Considered in Mitigation Unless and Until Offered by Defendant (T.d. 97).
3. Defendant's Motion to Dismiss Capital Components of this Case Due to Constitutional and International Law Violations (T.d. 170).
4. Defendant's Motion to Suppress Statements Obtained in Violation of Defendant's Constitutional Rights (T.d. 171).
5. Any and all oral defense motions that the trial court overruled/denied and any and all of those of the State that the trial court granted/sustained including not limited to:
  - A. Defense's objections to State's leading questions (T.p. 141, 257, 481, 498-499, 518, 522);
  - B. Defense's hearsay objections (T.p. 173, 458, 500-501, 554, 559);
  - C. Defense's objections regarding relevance of evidence that the State presented (T.p. 172, 497, 521);
  - D. Defense's objection regarding speculation and lack of foundation (T.p. 175, 293, 303, 320, 322, 506, 520, 592, 599, 601);
  - E. Defense's objections to trial court allowing State's question regarding administration of CPR (T.p. 176);
  - F. State's objection to defense's question regarding alleged victim's mother (T.p. 181);

- G. State's objections alleging defense's questioning to be argumentative (T.p. 184, 278);
- H. Defense's objection at Line 20 (T.p. 299);
- I. Defense's objection at Line 7 (T.p. 301);
- J. Defense's objection at Line 7 (T.p. 302);
- K. Defense's objection at Line 35 (T.p. 304);
- L. Defense's objection to trial court's allowing of Exhibits 14A through 14D (T.p. 305, 650);
- M. Defense's objection to testimony as to what the pediatric ophthalmologist saw (T.p. 314);
- N. Defense's objection to allowing of a general pediatrician's testimony regarding an issue related to ophthalmology (T.p. 315);
- O. States' objection to defense questioning alleging that it was repetitive (T.p. 444);
- P. Defense's objection to State's questioning, alleging that State's questioning exceeded the scope of the indictment (T.p. 456-457, 474, 499, 555);
- Q. Defense's objection alleging that State's question was prejudicial (T.p. 511);
- R. Defense's objection alleging that the trial court's admission of State's Exhibit 18, alleging irrelevant and inflammatory nature of State's Exhibit 18 (T.p. 562);
- S. Defense's objection to State's Exhibit 10, alleging that State's Exhibit 10, alleging that State's Exhibit 10 was not properly authenticated (T.p. 649);
- T. The trial court's denial of defense's Motion of Acquittal pursuant to Criminal Rule 29 (T.p. 652).

The appellant so objects pursuant to *State v. Poindexter*, in which the Ohio Supreme Court wrote that “[w]hile we recognize that certain issues of law must be raised

to preserve a party's right of appeal in federal court, we will not reconsider and discuss such issues at length in each case. We, therefore, hold that when issues of law in capital cases have been considered and decided by this court and are raised anew in a subsequent capital case, it is proper to summarily dispose of such issues in the subsequent case." In the case at bar, the Appellant respectfully so preserves.

### PROPOSITION OF LAW NO. 8

The trial court convicted Lamont Hunter upon insufficient evidence, thereby denying him due process under the federal and state constitutions. U.S. Const. Amend. V & XIV, Ohio Const. Art. I, § 10.

1. There is insufficient evidence that Lamont Hunter murdered Trustin Blue.

Due process requires "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof." *Jackson v. Virginia* (1979), 443 U.S. 307, 316, 99 S. Ct. 2781, 2787. "The test for sufficiency of evidence is whether any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, could have found the elements of the crime beyond a reasonable doubt." *State v. Allen* (1995), 73 Ohio St. 3d 626, 630, 653 N.E. 2d 675, 682.

Viewing the evidence in the light most favorable to the prosecution, as outlined in the Statement of Facts, supra, there is little to show that Lamont Hunter purposely caused the death of Trustin Blue with prior calculation and design. He was simply the only adult present and there were other plausible explanations for the child's injuries.

Hunter's conviction for aggravated murder cannot stand.

2. There is insufficient evidence that Lamont Hunter raped Trustin Blue.

Hunter incorporates the same authority as cited under the first issue, supra, and submits that there is insufficient evidence as outlined in the Statement of Facts.

3. There is insufficient evidence that Lamont Hunter endangered Trustin Blue.

Hunter incorporates the same authority as cited under the first issue, supra, and submits that there is insufficient evidence as outlined in the Statement of Facts.

### PROPOSITION OF LAW NO. 2

The trial court violated the due process rights of Lamont Hunter when it entered a conviction that was against the manifest weight of the evidence. U.S. Const. Amend. V & XIV, Ohio Const. Art. I, § 10.

1. A conviction for aggravated murder is against the manifest weight of the evidence where the accused presents or solicits a no less credible version of the facts.

A conviction is against the manifest weight of the evidence when the court, after reviewing the entire record, weighing the evidence and all reasonable inferences and considering the credibility of the witness determines in resolving conflicts in the evidence, that the jury clearly lost its way and created manifest miscarriage of justice requiring reversal of the conviction and a new trial. *State v. Martin* (1983), 20 Ohio App. 3d 172, 175, 485 N.E. 2d 717.

When one looks at the case at bar, as presented in the Statement of Facts, supra, it is clear that the trial court's decision does not meet the *Martin* standard. The three-judge panel, held to the same standard as a jury, clearly lost its way when the accused presented or solicited a no less credible version of the facts.

2. A conviction for rape against the manifest weight of the evidence where the accused presents or solicits a no less credible version of the facts.

Hunter incorporates the same argument as under the first issue, supra.

3. A conviction for endangering children against the manifest weight of the evidence where the accused presents or solicits a no less credible version of the facts.

Hunter incorporates the same argument as under the first issue, supra.

### PROPOSITION OF LAW NO. 10

Considered together, the cumulative errors set forth in appellant's brief merit reversal.

If this Court determines that there were instances of error in this case, then it must determine the cumulative effect of these errors. *State v. Garner*, 74 Ohio St. 3d 49, 656 N.E. 2d 623 (1995). *See also State v. Williams*, 99 Ohio St. 3d 493, 794 N.E. 2d 27 (2003), and *State v. Brown*, 115 Ohio State 3d 55, 69-70, 873 N.E. 2d 858 (2007). Should this Court determine that there is more than one instance of error that does not merit reversal, this Court must then analyze the cumulative effect of the errors to determine whether Hunter's convictions and sentence should be reversed. Cumulative error committed during the trial court proceedings violated Hunter's rights under the United States Constitution's Fifth, Sixth, Eighth, and Fourteenth Amendments, as well as applicable provisions in the Ohio Constitution.

## CONCLUSION

For each of the foregoing reasons, Appellant Lamont Hunter's convictions and death sentence must be reversed.

Respectfully submitted,



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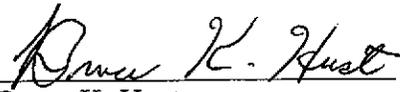


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## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MERIT BRIEF and APPENDIX of Appellant Lamont Hunter was hand-delivered to Ronald W. Springman, Jr., 230 East Ninth Street, Cincinnati, Ohio 45202, this 14<sup>th</sup> day of July, 2008.



**Bruce K. Hust**  
**Attorney for Appellant**

IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
Appellee

vs.

LAMONT HUNTER  
Appellant

Case No. 07-2021

Appeal taken from Hamilton County  
Court of Common Pleas  
Case No. B-0600596

This is a death penalty case

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Notice of Appeal of Appellant Lamont Hunter

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**FILED**  
Criminal Division

NOV 8 - 2007

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SUPREME COURT OF OHIO



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IN THE SUPREME COURT OF OHIO

STATE OF OHIO	)	Case No.
Appellee	)	
vs.	)	Appeal taken from Hamilton County
LAMONT HUNTER	)	Court of Common Pleas
Appellant	)	Case No. B-0600596
	)	This is a death penalty case
	)	

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Notice of Appeal

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Appellant Lamont Hunter hereby gives notice of appeal to the Supreme Court of Ohio from the decision and judgment entry of the Hamilton County Court of Common Pleas, entered on September 20, 2007. See Exhibit A. This is a capital case and the date of the offense is January 19, 2006. See Supreme Court Rule of Practice XIX, § 1(A).

Respectfully submitted,



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*(day phone  
authorization,  
10/31/07)*

Counsel for Appellant

Certificate of Service

I hereby certify that a copy of this Notice of Appeal was served upon Counsel for Appellee by regular U.S. Mail, this 1st day of November, 2007.

Bruce K. Hust

Bruce K. Hust  
Counsel for Appellant

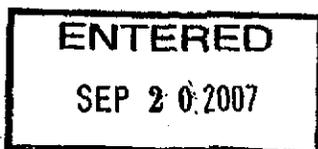
Herbert E. Freeman

Herbert E. Freeman  
Counsel for Appellant

(by  
phone  
authorization,  
10/31/07)

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 09/20/2007  
code: GJEI  
judge: 109



STATE OF OHIO  
VS.  
LAMONT HUNTER

*Norbert A. Nadel*  
Judge: NORBERT A NADEL

*Alex Triantafilou* 9/20/07  
Judge: ALEX TRIANTAFILOU

*Ralph E. Winkler*  
Judge: RALPH E WINKLER

NO: B 0600596

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

Defendant was present in open Court with Counsel CLYDE BENNETT II on the 20th day of **September 2007** for sentence.

The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and executing a written waiver of trial by jury and after trial by the court, the defendant has been found guilty of the offense(s) of:

**count 1: AGGRAVATED MURDER WITH SPECIFICATIONS #1 AND #2,  
2903-01C/ORCN, CAPITAL DEATH**

**count 2: RAPE, 2907-02A1B/ORCN,F1**

**count 3: ENDANGERING CHILDREN, 2919-22B1/ORCN,F2**

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

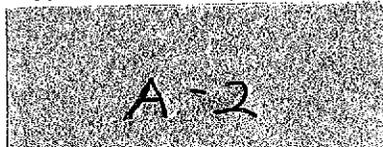
Defendant is sentenced to be imprisoned as follows:

**count 1: CONFINEMENT: DEPARTMENT OF CORRECTIONS  
DEATH BY LETHAL INJECTION**

**count 2: CONFINEMENT: LIFE WITHOUT PAROLE  
DEPARTMENT OF CORRECTIONS**

**count 3: CONFINEMENT: 8 Yrs DEPARTMENT OF CORRECTIONS**

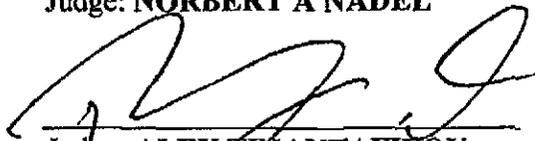
Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

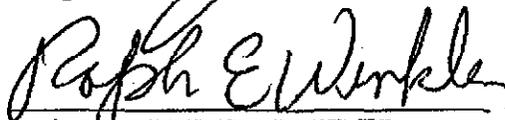


THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 09/20/2007  
code: GJEI  
judge: 109

  
Judge: NORBERT A NADEL

  
Judge: ALEX TRIANTAFILOU

  
Judge: RALPH E WINKLER

NO: B 0600596

STATE OF OHIO  
VS.  
LAMONT HUNTER

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

THE SENTENCES IN COUNTS #1, #2, AND #3 ARE TO BE SERVED  
CONSECUTIVELY TO EACH OTHER AND ALL SENTENCES IMPOSED ARE  
THE MAXIMUM AS PROVIDED BY LAW AS TO THE DATE OF THE  
COMMISSION OF THE OFFENSES.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS  
REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED  
AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO  
WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE  
INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR  
IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL  
CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE  
REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL,  
PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO  
SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT  
PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW.  
IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED  
DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE  
SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS  
CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE,  
TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

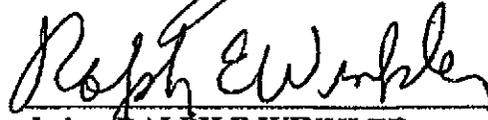
Defendant was notified of the right to appeal as required by Crim. R 32(A)(2)

THE STATE OF OHIO, HAMILTON COUNTY  
COURT OF COMMON PLEAS

date: 09/20/2007  
code: GJEI  
judge: 109

  
Judge: NORBERT A NADEL

  
Judge: ALEX PRIANTAFILOU

  
Judge: RALPH E WINKLER

NO: B 0600596

STATE OF OHIO  
VS.  
LAMONT HUNTER

JUDGMENT ENTRY: SENTENCE:  
INCARCERATION

AS PART OF THE SENTENCE IMPOSED IN COUNT #3 IN THIS CASE, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR THREE ( 3 ) YEARS.

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE ( 9 ) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT ( 50% ) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE ( 12 ) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

\*\*\*THE DEFENDANT IS CLASSIFIED A SEXUAL PREDATOR AS TO COUNT #2\*\*\*

COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
HAMILTON COUNTY, OHIO

STATE OF OHIO : CASE NO. B-0600596  
Plaintiff : (Judges Nadel, Triantafilou & Winkler)  
-vs- :  
LAMONT HUNTER : OPINION  
Defendant :

FILED

2007 SEP 21 A 11:36

GREGORY HARTMANN  
CLERK OF COURTS  
HAMILTON COUNTY, OH

This case originated with the filing of an indictment on February 1, 2006, against Defendant, Lamont Hunter, charging him with Aggravated Murder in Count One and charging him with two specifications of aggravating circumstances in Count One, thus qualifying this case as a possible death penalty case under the laws of the State of Ohio. In addition, the indictment charged the Defendant with Rape in Count Two, and with Child Endangering in Count Three.



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This opinion deals only with the Aggravated Murder charge and the specifications pertaining to the charge of Aggravated Murder. It is prepared and will be filed with the Supreme Court of Ohio in compliance with the requirements of O.R.C. 2929.03(F).

Since the date of the subsequent arraignment, the docket sheet reflects an extensive process of trial preparation. Numerous motions were filed before and during trial. They were heard and ruled upon during the course of the pretrial preparation, the guilt or innocence trial, and the sentencing proceedings. All rulings on said motions are reflected either on the docket sheet of the case or on the record.

### **GUILT OR INNOCENCE TRIAL**

The guilt or innocence trial of Defendant, Lamont Hunter, commenced on June 11, 2007, with the Defendant having previously entered an appropriate Waiver of Trial by Jury.

By random draw, Judge Alex Triantafilou and Judge Ralph E.

Winkler were assigned to sit as a part of a three-judge panel. The three-judge panel consisted of Judge Norbert A. Nadel (presiding) along with Judges Triantafilou and Winkler.

On June 11, 2007, the State commenced its case and produced evidence on the charge of Aggravated Murder as set forth in Count One of the indictment; evidence as to the specifications of aggravating circumstances as to Count One; and evidence on the other counts in the indictment. During the course of the guilt or innocence trial, the State of Ohio presented nine witnesses and the defense rested without calling a witness.

The evidence was uncontroverted that Lamont Hunter was the perpetrator of the Aggravated Murder of Trustin Blue, age three, as well as the other offenses charged in the indictment.

On June 15, 2007, the three-judge panel found Defendant guilty of Aggravated Murder as charged in Count One and the specifications thereto.

In addition, the three-judge panel found Defendant guilty of Rape and Endangering Children as charged in the other counts of the indictment.

### **SENTENCING PROCEEDINGS**

On September 5, 2007, the second phase of this matter, hereinafter referred to as the sentencing proceedings, commenced pursuant to O.R.C. 2929.03(D).

At the sentencing proceedings the three-judge panel reversed the traditional trial procedure by ordering Defendant to proceed first. This reversal of procedure did not, in any way, alter the burden of proof placed upon the State. The three-judge panel heard additional testimony and the arguments of respective counsel relative to the factors in favor of and in mitigation of the sentence of death.

The three-judge panel, upon consideration as to the applicable law in the sentencing proceedings and upon due deliberation, did on September 20, 2007, return its verdict and found unanimously that the State of Ohio proved by proof beyond reasonable doubt that the aggravating circumstances of which Lamont Hunter was found guilty of having committed were sufficient to outweigh the mitigating factors in this case. The three-judge panel recommended in its verdict that the sentence of death be imposed as mandated by provisions of O.R.C. 2929.03(D)(2).

### **IMPOSITION OF SENTENCE PROCEEDINGS**

On September 20, 2007, the three-judge panel proceeded to impose sentence pursuant to O.R.C. 2929.03(D)(3). On that same date, the three-judge panel announced that its written opinion would be filed within fifteen days as required by O.R.C. 2929.03(F).

The three-judge panel having found by proof beyond a reasonable doubt upon a review of the relevant evidence and the arguments of respective counsel that the aggravated circumstances which Defendant, Lamont Hunter, was found guilty of having committed did outweigh the mitigating facts in the case, and therefore on September 20, 2007, this three-judge panel imposed the sentence of death upon Defendant, Lamont Hunter, ordering said execution to take place on November 30, 2007.

### **OPINION**

The provisions of O.R.C. 2929.03(F) now require this three-judge panel to state in a separate opinion the specific findings as to the existence of any of the mitigating factors specifically enumerated in O.R.C. 2929.04(B) or the existence of any other mitigating factors, and also require the three-judge panel to state reasons why the aggravating circumstances that the offender was found guilty of having committed were sufficient to outweigh

the mitigating factors, since that is what the three-judge panel has, in fact, found by imposing the death penalty. In other words, the three-judge panel must put in writing the justification for its sentence.

In meeting its responsibility under the statute, the three-judge panel will review all mitigating factors raised by Defendant and will indicate what conclusions were reached from the evidence as to each. Those possible mitigating factors specifically set forth in the statute are as follows:

- (1) whether the victim of the offense induced or facilitated it;
- (2) whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;
- (3) whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial

capacity to appreciate the criminality of his conduct or to conform his conduct to other requirements of the law;

- (4) the age of the offender;
- (5) the offender's lack of significant history of prior criminal convictions and delinquency adjudications;
- (6) if the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;
- (7) any other factors that are relevant to the issue of whether the offender should be sentenced to death; and
- (8) the nature and circumstances of the offense, and the history, character, and background of the offender.

## AGGRAVATING CIRCUMSTANCES

The aggravating circumstances that the Defendant, Lamont Hunter, was found guilty of committing were that Defendant, Lamont Hunter, committed the offense of Aggravated Murder of Trustin Blue while he was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of Rape, and Lamont Hunter was the principal offender in the commission of the Aggravated Murder.

Also, Lamont Hunter in the commission of the offense purposefully caused the death of Trustin Blue, who was under the age of thirteen at the time of the commission of the offense, and Lamont Hunter was the principal offender in the commission of the offense.

In deliberating upon its decision in this case as required by O.R.C. 2929.03(3)(D), the three-judge panel placed itself in the same position as if

it were a member of a jury panel. The three-judge panel evaluated all of the relevant evidence raised at trial and the arguments of respective counsel.

The evidence and testimony were tested by the three-judge panel from the viewpoint of credibility and relevancy to the existence of aggravating circumstances along with their qualitative and quantitative measure.

In the guilt or innocence trial and in the sentencing proceedings, as well as in counsel's arguments, there was never a doubt in any respect that Defendant was the principal perpetrator of the offenses charged in Counts One, Two and Three of the indictment. A complete review of the evidence pertaining to Counts One, Two and Three and the specifications of aggravating circumstances as to Count One reveals to this three-judge panel beyond a reasonable doubt that the Aggravated Murder of Trustin Blue, age three, as well as the other offences charged in the other counts of the indictment were committed by Defendant, Lamont Hunter.

The evidence showed that in the early morning hours of January 19, 2006, Luzmilda Blue, the mother of Trustin Blue, age three, left Lamont Hunter alone with Trustin and another child, age nine months. Later that morning, after receiving a phone call from Lamont Hunter, Luzmilda Blue rushed home and found Trustin limp and barely breathing. Trustin had a head injury, retinal hemorrhaging, and an injury in the anus, which was bleeding.

Luzmilda Blue called 911 and paramedics arrived. Trustin was rushed to Children's Hospital where he was placed on life-support machines. Trustin died the next day.

It was clear from the evidence that Trustin was shaken, beaten to death, and raped with an object.

It was therefore the three-judge panel's conclusion, upon a full and complete review of all the relevant evidence, that there was proof beyond a

reasonable doubt that Defendant, as the principal offender, committed the offense of the Aggravated Murder of Trustin Blue while Defendant was committing the offense of Rape.

The three-judge panel also found from the evidence that there was proof beyond a reasonable doubt that the Defendant, as the principal offender in the commission of the offense, purposely caused the death of Trustin Blue, who was under the age of thirteen at the time of the commission of the offense.

The three-judge panel further finds that Defendant's killing of Trustin Blue, a three-year-old child with no way to defend himself, was a completely unnecessary and cold-blooded act. This killing evidenced the particularly malicious outlook of this Defendant.

## MITIGATING FACTORS

The three-judge panel will now review all possible mitigating factors and indicate whether they were present, and if so, what, if any, consideration the three-judge panel gave to them. Those listed in O.R.C. 2929.04(B) are as follows:

- (1) "Whether the victim of the offenses induced or facilitated it."

The three-judge panel finds absolutely no evidence whatsoever to suggest that the victim in any respect induced or facilitated the offense. This factor was not present.

- (2) "Whether it is unlikely that the offenses would have been committed, but for the fact that offender was under duress, coercion, or strong provocation." Again, the three-judge panel found no evidence of any nature that would suggest that

Defendant was under duress, coercion, or strong provocation.

This factor was not present.

(3) "Whether, at the time of committing the offense, the offender,

because of a mental disease or defect, lacked substantial

capacity to appreciate the criminality of his conduct or to

conform his conduct to the requirements of the law." Again,

the three-judge panel found from the evidence that Defendant

did not suffer from a mental disease or defect.

(4) "The age of the offender." The three-judge panel finds that

Defendant was, at the time of this offense, thirty-eight years of

age. There was no evidence to suggest that his age was a factor

that should be taken into account in mitigation of the sentence

of death.

(5) “The offender’s lack of a significant history of prior criminal conviction and delinquent adjudications.” The record in this case indicates that the Defendant has at least two felony convictions for criminal offenses as an adult. Therefore, the three-judge panel has deemed it inappropriate to give the Defendant any consideration pursuant to mitigating factor number five.

(6) “If the offender was a participant in the offense but not the principal offender, the degree of the offender’s participation in the offense and the degree of the offender’s participation in the acts that led to the death of the victim.” The three-judge panel found in this case that Defendant was the principal offender and, therefore, this mitigating factor was not present.

The three-judge panel now reviews the remaining possible mitigating factors enumerated in O.R.C. 2929.04(B). These two remaining possible mitigating factors are closely interrelated and will be reviewed as interrelated.

- (7) “Any other factors that are relevant to the issue of whether the offender should be sentenced to death,” and,
- (8) “The nature and circumstances of the offense, and the history, character, and background of the offender.”

The nature and circumstances of this offense appear clear to this three-judge panel. Therefore, it will not be this three-judge panel’s intention to reiterate in this opinion each and every detail of the murder of Trustin Blue or the other offenses committed by Defendant, but rather to review the basic facts.

Trustin Blue was born in September of 2002. Trustin never had a father. His mother, Luzmilda Blue, a single mother of two other sons by different fathers, did not know who was the father of Trustin.

Luzmilda Blue had a history of depression and attempting suicide twice. She once wished she had a gun so she could kill herself and her children.

Luzmilda Blue met Lamont Hunter in late 2003, and they lived together and subsequently had a fourth child.

In June of 2004, Luzmilda left home to run errands, leaving Trustin and two of her other children alone with Hunter. When Luzmilda returned two hours later, dried blood was on Trustin's scalp and blood dripped from his ear and penis. Hunter claimed that Trustin's injuries were caused when he tripped down the stairs with Trustin.

As a result of the incident, all of the children were taken away from Luzmilda. There was also a court order that Lamont Hunter was to have no contact with Trustin Blue. That court order lasted until August of 2005. In August of 2005, the other children including Trustin, were returned to Luzmilda with no protective order as to Lamont Hunter.

On January 19, 2006, at 6:00 a.m., Luzmilda left the children alone with Lamont Hunter in order to go to work at a Speedway around the corner from their Carthage home. Around 8:00 a.m., the older children went to school, leaving Hunter alone with a nine-month-old child and Trustin.

Wilma Forte, a family friend, called the residence at approximately 9:00 a.m., and spoke to Trustin. At that time, Trustin was coherent.

At around 11:00 a.m., Luzmilda talked to Lamont on the phone and was told by Lamont that there had been an accident. Luzmilda rushed home from Speedway and called 911. At 11:20 a.m., Cincinnati firefighters

arrived at the scene to find an unresponsive and basically lifeless Trustin Blue at the residence.

Lamont Hunter told the firefighters that Trustin fell down the steps leading from the kitchen to the basement.

Trustin was taken to the hospital and was basically brain dead. Trustin was examined and there was blood in his underwear and his pants. There were fresh and severe anal tears and lacerations and tremendous injuries to his brain in addition to retinal hemorrhages in his eyes.

Neither the head injury nor the anal injury could have happened in a fall.

Trustin died the next day. The autopsy revealed more severe injuries in that the anal injuries went all the way through his rectum and even into the inside of his body, and the head injuries were caused by two separate impacts to his head. The evidence showed Trustin Blue was used as a

baseball bat and slammed against a hard object. His bones inside were even torn away from his body because the impact was so severe.

Thus the proven facts of aggravated circumstances reveal a calculated, cruel, willful, cowardly, and cold-blooded disregard for human life and values.

At the sentencing hearing, Defendant's parents testified that their son, Lamont Hunter, was very supportive and helpful. He often helped with chores around the house and had a very good relationship with his nieces and nephews. The parents further testified that although their son used drugs and alcohol, it had no impact on his behavior.

While the three-judge panel recognizes that Defendant may have abused drugs and alcohol, there is no evidence that this problem resulted in any scarring of Defendant which would manifest itself and possibly explain his behavior on January 19, 2006.

Other family members testified that Defendant, Lamont Hunter, was very good in the way he treated children, including his own.

Mariah Brown, age fifteen, and a step-daughter to Defendant testified that Lamont Hunter helped raise her and treated her so well that she considers Defendant to be her father.

Ashley Nicole Hunter, age eighteen, and Defendant's eldest daughter also testified that Lamont Hunter was a good father and was always there to help her.

And, finally, Defendant in his unsworn statement to the three-judge panel said, "I understand that on paper the charges against me can really dehumanize me as a person. Contrary to the charges, I am a loving father to my children, son to my parents, and brothers to my siblings...I'm not a saint, but I'm not a monster either".

**CONCLUSION**

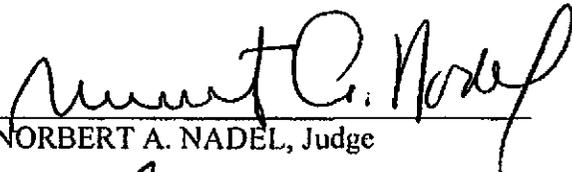
The sole issue which confronted the three-judge panel is stated as follows:

DID THE STATE OF OHIO PROVE BEYOND A  
REASONABLE DOUBT THAT THE AGGRAVATING  
CIRCUMSTANCES WHICH DEFENDANT, LAMONT  
HUNTER, WAS FOUND GUILTY OF HAVING  
COMMITTED OUTWEIGH THE FACTORS IN  
MITIGATION OF THE IMPOSITION OF THE SENTENCE  
OF DEATH?

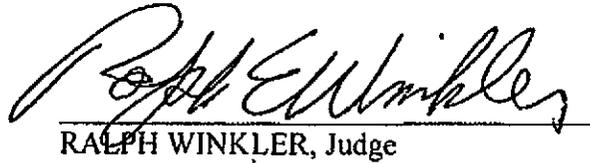
In this regard, all of the statutory mitigating circumstances and all other possible mitigating facts raised by counsel have now been reviewed and discussed. The same has been done with the aggravating circumstances.

Upon full, careful, and complete scrutiny of all the mitigating factors set forth in the statute or called to the three-judge panel's attention by defense counsel in any manner, and after considering fully the aggravating circumstances which exist and have been proven beyond a reasonable doubt, the three-judge panel concludes that the aggravating circumstances do far outweigh all the mitigating facts advanced by Defendant, Lamont Hunter, beyond a reasonable doubt as required by O.R.C. 2929.03(D)(3).

For all of the above reasons the sentence of death was imposed upon  
Defendant, Lamont Hunter, on September 20, 2007.

  
NORBERT A. NADEL, Judge

  
ALEX TRIANTAFILOU, Judge

  
RALPH WINKLER, Judge

**Copies of this Opinion were mailed to:**

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Norbert A. Nadel, Judge

Date: 9/21/07

## CHAPTER 2903: HOMICIDE AND ASSAULT

Section

### [HOMICIDE]

- 2903.01 Aggravated murder.
- 2903.02 Murder.
- 2903.03 Voluntary manslaughter.
- 2903.04 Involuntary manslaughter.
- [2903.04.1] 2903.041 Reckless homicide.
- 2903.05 Negligent homicide.
- 2903.06 Aggravated vehicular homicide; vehicular homicide; vehicular manslaughter.
- 2903.07 Repealed.
- 2903.08 Aggravated vehicular assault; vehicular assault.
- [2903.08.1] 2903.081 Signs in construction zones concerning vehicular homicide and assault offenses.
- 2903.09 Legal abortions and acts or omissions of pregnant woman excepted from liability.
- 2903.10 Definitions: functionally impaired person; caretaker.

### [ASSAULT]

- 2903.11 Felonious assault.
- 2903.12 Aggravated assault.
- 2903.13 Assault.
- 2903.14 Negligent assault.
- 2903.15 Permitting child abuse.
- 2903.16 Failing to provide for a functionally impaired person.

### [MENACING]

- 2903.21 Aggravated menacing.

### [STALKING]

- [2903.21.1] 2903.211 Menacing by stalking.
- [2903.21.2] 2903.212 Considerations in setting amount and conditions of bail for certain offenses.
- [2903.21.3] 2903.213 Motion for protection order as pretrial condition of release.
- [2903.21.4] 2903.214 Petition for protection order to protect victim of menacing by stalking or sexually oriented offense.
- [2903.21.5] 2903.215 Repealed.
- 2903.22 Menacing.
- 2903.31 Hazing.

### [PATIENT ABUSE AND NEGLECT IN CARE FACILITIES]

- 2903.33 Definitions.
- 2903.34 Patient abuse; neglect.
- [2903.34.1] 2903.341 Patient endangerment.
- 2903.35 Filing false patient abuse or neglect complaints.
- 2903.36 Discrimination, retaliation prohibited.
- 2903.37 License revocation.

### [HOMICIDE]

#### § 2903.01 Aggravated murder.

(A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape.

(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.

(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.

(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:

(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.

(2) It is the offender's specific purpose to kill a law enforcement officer.

(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

(C) As used in this section:

(1) "Detention" has the same meaning as in section 2921.01 of the Revised Code.

(2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 239 (Eff 9-6-96); 147 v S 32 (Eff 8-6-97); 147 v H 5 (Eff 6-30-98); 147 v S 193 (Eff 12-29-98); 149 v S 184. Eff 5-15-2002.

Not analogous to former RC § 2903.01 (CC § 12423-1; 109 v 45; 121 v 557 (572); Bureau of Code Revision, 10-1-53; 126 v 114), repealed 134 v H 511, § 2, eff 1-1-74.

#### § 2903.02 Murder.

(A) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

(C) Division (B) of this section does not apply to an offense that becomes a felony of the first or second degree only if the offender previously has been convicted of that offense or another specified offense.

(D) Whoever violates this section is guilty of murder, and shall be punished as provided in section 2929.02 of the Revised Code.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 146 v S 239 (Eff 9-6-96); 147 v H 5. Eff 6-30-98.

Not analogous to former RC § 2903.02 (RS § 6998; S&S 377; 59 v 65; 83 v 202; GC §§ 12962, 12963; Bureau of Code Revision, 10-1-53; 131 v 671), repealed 134 v H 511, § 2, eff 1-1-74.

#### § 2903.03 Voluntary manslaughter.

(A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of

des a transmitter and receiver... ne, or at a designated point in... atral monitoring computer on... t that the transmitter is turned... ner without prior approval of... electronic monitoring or witho... department of rehabilitation... o the use of an electronic moni... te on transitional control or other...

nology that can adequately track... of a subject person at any time... the director of rehabilitation... but not limited to, any satell... king system, or retinal scanni... wed.

nic loss" means nonpecuniary har... an offense as a result of or relate... f the offense, including, but sa... ffering; loss of society, consortiu... assistance, attention, protection... l, instruction, training, or educat... ny other intangible loss.

as the same meaning as in sectio... l Code.

cohol monitoring" means the ab... and periodically transmit alcoh... ad tamper attempts at least ever... location of the person who is bei...

adjudicated a sexually violent pred... convicted of or pleads guilty... also is convicted of or pleads g... predator specification that was... nent, count in the indictment... that violent sex offense or... if or pleads guilty to a designat... kidnapping offense and also is... guilty to both a sexual motiva... xually violent predator specifi... the indictment, count in the ind... charging that designated homici... offense.

(Eff 7-1-96); 146 v S 269 (Eff 7-1-98); 146 v H 480 (Eff 10-16-96); 146 v H 46 v H 180 (Eff 1-1-97); 147 v H 200; § 111 (Eff 3-17-98); 146 v S 9; 147 (Eff 3-23-2000); 148 v S 22; 149 (Eff 9-22-2000); 148 v S 22; 149 v S 3 (Eff 1-1-2002); 149 v H 327; 149 v S 1, eff. 1-1-04; 149 v S 123, § 1, eff. 1-1-04; 150 v S 5, § 3, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 162, § 1, eff. 10-12-06; 151 v H 461, § 1, eff. 4-4-07; 152

et by § 3 of 152 v S 10.  
of 152 v S 10 read as follows:  
Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. H.B. 162 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the act as presented in this act.  
The provisions of § 3 of H.B. 473 (150 v —) read as follows:  
SECTION 3. \* \* \* Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. \* \* \* The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the act as presented in this act.  
The effective date is set by section 4 of H.B. 490.  
Not analogous to former RC § 2929.01 (134 v H 511; 136 v H 200; 137 v H 565; 139 v S 199; 140 v S 210; 142 v H 261; 145 v H 571; 145 v S 186, repealed 146 v S 2, § 2, eff 7-1-96).  
The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:  
SECTION 5. Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of this act amended or added in Sections 1 and 2 of this act shall apply only in relation to offenses committed on or after January 1, 2004. Offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed.  
See provisions, § 4 of HB 327 (149 v —) following RC 2919.25  
See provisions, § 11 of SB 179 (148 v —) following RC 2923.36

SECTION 5. (B) Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. H.B. 162 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the act as presented in this act.  
The provisions of § 3(B) of 151 v S 260 read as follows:  
SECTION 3. \* \* \* (B) Section 2929.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 95 and Am. Sub. H.B. 162 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the act as presented in this act.

The provisions of § 3 of H.B. 473 (150 v —) read as follows:  
SECTION 3. \* \* \* Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. \* \* \* The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the act as presented in this act.  
The effective date is set by section 4 of H.B. 490.  
Not analogous to former RC § 2929.01 (134 v H 511; 136 v H 200; 137 v H 565; 139 v S 199; 140 v S 210; 142 v H 261; 145 v H 571; 145 v S 186, repealed 146 v S 2, § 2, eff 7-1-96).  
The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:  
SECTION 5. Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of this act amended or added in Sections 1 and 2 of this act shall apply only in relation to offenses committed on or after January 1, 2004. Offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed.  
See provisions, § 4 of HB 327 (149 v —) following RC 2919.25  
See provisions, § 11 of SB 179 (148 v —) following RC 2923.36

SECTION 3. \* \* \* Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. \* \* \* The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the act as presented in this act.  
The effective date is set by section 4 of H.B. 490.  
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The provisions of § 5 of S.B. 123 (149 v —), as amended by § 3 of H.B. 163 (150 v —), read as follows:  
SECTION 5. Notwithstanding division (B) of section 1.58 of the Revised Code, the provisions of this act amended or added in Sections 1 and 2 of this act shall apply only in relation to offenses committed on or after January 1, 2004. Offenses committed prior to January 1, 2004, shall be governed by the law in effect on the date the conduct or offense was committed.  
See provisions, § 4 of HB 327 (149 v —) following RC 2919.25  
See provisions, § 11 of SB 179 (148 v —) following RC 2923.36

SECTION 3. \* \* \* Sections 2929.01, 2929.13, and 2929.14 of the Revised Code are presented in this act as composites of the sections as amended by both Sub. H.B. 52 and Am. Sub. H.B. 163 of the 125th General Assembly. \* \* \* The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the act as presented in this act.  
The effective date is set by section 4 of H.B. 490.  
Not analogous to former RC § 2929.01 (134 v H 511; 136 v H 200; 137 v H 565; 139 v S 199; 140 v S 210; 142 v H 261; 145 v H 571; 145 v S 186, repealed 146 v S 2, § 2, eff 7-1-96).  
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See provisions, § 4 of HB 327 (149 v —) following RC 2919.25  
See provisions, § 11 of SB 179 (148 v —) following RC 2923.36

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See provisions, § 4 of HB 327 (149 v —) following RC 2919.25  
See provisions, § 11 of SB 179 (148 v —) following RC 2923.36

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See provisions, § 4 of HB 327 (149 v —) following RC 2919.25  
See provisions, § 11 of SB 179 (148 v —) following RC 2923.36

[PENALTIES FOR MURDER]

§ 2929.02 Penalties for aggravated murder

Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022 [2929.02.2], 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court but not more than twenty-five thousand dollars.

(1) Except as otherwise provided in division (B)(2) of this section, whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of years to life.

(2) Except as otherwise provided in division (B)(3) of this section, if a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised

Code, the victim of the offense was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the court shall impose an indefinite prison term of thirty years to life pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(3) If a person is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(4) In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

(D)(1) In addition to any other sanctions imposed for a violation of section 2903.01 or 2903.02 of the Revised Code, if the offender used a motor vehicle as the means to commit the violation, the court shall impose upon the offender a class two suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege as specified in division (A)(2) of section 4510.02 of the Revised Code.

(2) As used in division (D) of this section, "motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.

HISTORY: 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v H 180 (Eff 1-1-97); 147 v S 107, Eff 7-29-98; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.  
See provisions, § 4 of HB 180 (146 v —), following RC § 2921.34.

[§ 2929.02.1] § 2929.021 Notice to supreme court of indictment charging aggravated murder; plea.

(A) If an indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the clerk of the court in which the indictment is filed, within fifteen days after the day on which it is filed, shall file a notice with the supreme court indicating that the indictment was filed. The notice shall be in the form prescribed by the clerk of the supreme court and shall contain, for each charge of aggravated murder with a specification, at least the following information pertaining to the charge:

(1) The name of the person charged in the indictment or count in the indictment with aggravated murder with a specification;

(2) The docket number or numbers of the case or cases arising out of the charge, if available;

(3) The court in which the case or cases will be heard;

(4) The date on which the indictment was filed.

(B) If the indictment or a count in an indictment charges the defendant with aggravated murder and contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the defendant pleads guilty or no contest to any offense in the case or if the indictment or any count in the indictment is dismissed, the clerk of the court in which the plea is entered or the indictment or count is dismissed shall file a notice with the supreme court indicating what action was taken in the case. The notice shall be filed within fifteen days after the plea is entered or the indictment or count is dismissed, shall be in the form prescribed by the clerk of the supreme court, and shall contain at least the following information:

(1) The name of the person who entered the guilty or no contest plea or who is named in the indictment or count that is dismissed;

(2) The docket numbers of the cases in which the guilty or no contest plea is entered or in which the indictment or count is dismissed;

(3) The sentence imposed on the offender in each case.

HISTORY: 139 v S 1. Eff 10-19-81.

**[§ 2929.02.2] § 2929.022 Determination of aggravating circumstances of prior conviction.**

(A) If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, the defendant may elect to have the panel of three judges, if the defendant waives trial by jury, or the trial judge, if the defendant is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing held pursuant to divisions (C) and (D) of section 2929.03 of the Revised Code.

(1) If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant shall be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code, and on any other specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code in a single trial as in any other criminal case in which a person is charged with aggravated murder and specifications.

(2) If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge shall:

(a) Hold a sentencing hearing pursuant to division (B) of this section, unless required to do otherwise under division (A)(2)(b) of this section;

(b) If the offender raises the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense, conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction

listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. After conducting the hearing, the panel or judge shall proceed as follows:

(i) If that aggravating circumstance is proven beyond a reasonable doubt or if the defendant at trial was convicted of any other specification of an aggravating circumstance, the panel or judge shall impose sentence according to division (E) of section 2929.03 of the Revised Code.

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, except as otherwise provided in this division, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender. If that aggravating circumstance is not proven beyond a reasonable doubt, the defendant at trial was not convicted of any other specification of an aggravating circumstance, the victim of the aggravated murder was less than thirteen years of age, and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(B) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A)(2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of section 2929.03 and section 2929.04 of the Revised Code. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the sentencing hearing and impose sentence on the offender as follows:

(1) Subject to division (B)(2) of this section, the panel or judge shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the victim of the aggravated murder was less than thirteen years of age and the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, the panel or judge shall sentence the offender pursuant to division (B)(3) of

section 2971.03 of the Revised Code consisting of a minimum term of maximum term of life imprisonment.

HISTORY: 139 v S 1. Eff 10-19-81. 1-1-08.

The effective date is set by § 3 of 152

**[§ 2929.02.3] § 2929.023 may raise matter of age.**

A person charged with aggravated murder and more specifications of an aggravating circumstance, if the trial judge, after a trial that he was not eighteen years of age at the time of the alleged commission of the offense, raises the matter of age, with the evidence relating to the matter of age, the defendant. After a defendant has been found guilty at trial, the prosecution shall, by proof beyond a reasonable doubt, prove that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

HISTORY: 139 v S 1. Eff 10-19-81.

**[§ 2929.02.4] § 2929.024 Indigent defendant entitled to investigation services and experts for indictment.**

If the court determines that the defendant is indigent and that investigation services, expert testimony, and other services are reasonably necessary for the proper preparation and presentation of a defendant charged with aggravated murder at the sentencing hearing, the court shall order the defendant's counsel to obtain the necessary services for the defendant, and shall order that payment for the necessary services be made in the manner that payment for appointed counsel is made pursuant to Chapter 120. of the Revised Code. If the court determines that the necessary services are not available prior to court authorization for payment of the necessary services, the court shall order that the necessary services be obtained, authorized, and paid for by the defendant's counsel to obtain the necessary services. The court shall order that payment of the fees and expenses for the necessary services be made as provided in this section.

HISTORY: 139 v S 1. Eff 10-19-81.

**§ 2929.03 Imposing sentence on offender convicted of aggravated murder.**

(A) If the indictment or count in an indictment charging a defendant with aggravated murder does not contain a specification of an aggravating circumstance, if the defendant is found guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(1)(e) of this section, the trial court shall impose one of the following sentences on the offender:

(a) Life imprisonment without parole eligibility; or  
(b) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after a specified term of years of imprisonment;

of section 2929.04 of the Revised Code, if there is reasonable doubt. After conducting a hearing, the panel or judge shall proceed as follows:

(1) If the aggravating circumstance is proven beyond a reasonable doubt and the defendant at trial was convicted of a crime for which the panel or judge shall impose sentence according to section 2929.03 of the Revised Code.

(2) If the aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of a crime for which a specification of an aggravating circumstance otherwise provided in this division shall impose sentence of life imprisonment after serving twenty years of imprisonment. If that aggravating circumstance is proven beyond a reasonable doubt, the defendant is not convicted of any other specified aggravating circumstance, the victim of the offense is less than thirteen years of age, and the defendant is convicted of or pleads guilty to a sexual offense, the trial judge shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of life imprisonment and a maximum term of life imprisonment.

(3) If the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, upon a finding of a specification of an aggravating circumstance listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt, the panel of judges or the trial judge shall impose sentence on the offender pursuant to division (D) of section 2929.03 of the Revised Code. If the panel of judges or the trial judge does not determine that the aggravating circumstance of a prior conviction listed in division (A)(5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant is not convicted of any other specified aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the hearing and shall not impose sentence on the offender.

(4) If the panel of judges or the trial judge, upon a finding of a specification of an aggravating circumstance listed in division (A)(5) of section 2929.04 of the Revised Code, shall impose sentence on the offender pursuant to division (B)(2) of this section, the panel of judges or the trial judge shall impose sentence on the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(5) If the panel of judges or the trial judge, upon a finding of a specification of an aggravating circumstance listed in division (A)(5) of section 2929.04 of the Revised Code, shall impose sentence on the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code, the panel of judges or the trial judge shall impose sentence on the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

Section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

**HISTORY:** 139 v S 1. Eff 10-19-81; 152 v S 10, § 1, eff 10-19-88.

The effective date is set by § 3 of 152 v S 10.

### § 2929.02.3 § 2929.023 Defendant may raise matter of age.

A person charged with aggravated murder and one or more specifications of an aggravating circumstance may, at trial, raise the matter of his age at the time of the alleged commission of the offense and may present evidence at trial that he was not eighteen years of age or older at the time of the alleged commission of the offense. The burden of raising the matter of age, and of going forward with the evidence relating to the matter of age, are upon the defendant. After a defendant has raised the matter of age at trial, the prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the defendant was eighteen years of age or older at the time of the alleged commission of the offense.

**HISTORY:** 139 v S 1. Eff 10-19-81.

### § 2929.02.4 § 2929.024 Investigation services and experts for indigent.

If the court determines that the defendant is indigent and that investigation services, experts, or other services are reasonably necessary for the proper representation of a defendant charged with aggravated murder at trial or at the sentencing hearing, the court shall authorize the defendant's counsel to obtain the necessary services for the defendant, and shall order that payment of the fees and expenses for the necessary services be made in the same manner that payment for appointed counsel is made pursuant to Chapter 120. of the Revised Code. If the court determines that the necessary services had to be obtained prior to court authorization for payment of the fees and expenses for the necessary services, the court may, after the services have been obtained, authorize the defendant's counsel to obtain the necessary services and order that payment of the fees and expenses for the necessary services be made as provided in this section.

**HISTORY:** 139 v S 1. Eff 10-19-81.

### § 2929.03 Imposing sentence for aggravated murder.

(A) If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge of aggravated murder, the trial court shall impose sentence on the offender as follows:

(1) Except as provided in division (A)(2) of this section, the trial court shall impose one of the following sentences on the offender:

- (i) Life imprisonment without parole;
- (ii) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;

(c) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(d) Subject to division (A)(1)(e) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(e) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (A)(1)(a) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be served pursuant to that section.

(2) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 [2929.02.3] of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C)(1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code, the trial court shall impose sentence on the offender as follows:

(a) Except as provided in division (C)(1)(b) of this section, the trial court shall impose one of the following sentences on the offender:

- (i) Life imprisonment without parole;
- (ii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty years of imprisonment;
- (iii) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;
- (iv) Subject to division (C)(1)(a)(v) of this section, life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(v) If the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of life imprisonment without parole on the offender pursuant to division (C)(1)(a)(i) of this section, the trial court shall sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment.

(b) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(2)(a) If the indictment or count in the indictment contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code and if the offender is found guilty of both the charge and one or more of the specifications, the penalty to be imposed on the offender shall be one of the following:

(i) Except as provided in division (C)(2)(a)(ii) or (iii) of this section, the penalty to be imposed on the offender shall be death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(ii) Except as provided in division (C)(2)(a)(iii) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender also is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not impose a sentence of death or life imprisonment without parole on the offender pursuant to division (C)(2)(a)(i) of this section, the penalty to be imposed on the offender shall be an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that shall be imposed pursuant to division (B)(3) of section 2971.03 of the Revised Code and served pursuant to that section.

(iii) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(b) A penalty imposed pursuant to division (C)(2)(a)(i), (ii), or (iii) of this section shall be determined pursuant to divisions (D) and (E) of this section and shall be determined by one of the following:

(i) By the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury;

(ii) By the trial jury and the trial judge, if the offender was tried by jury.

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 [2929.02.3] of the Revised Code and was not found at trial to have been

eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this division. The court and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, shall hear testimony and other evidence that is relevant to the nature and circumstances of the aggravating circumstances the offender was found guilty of committing, the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender. The defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution shall have the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (a) of this section, to life imprisonment with parole eligibility after five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) Except as provided in division (b) of this section, if the victim of the aggravated murder was less than thirteen years of age, the offender is convicted of or pleads guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the offense, and the trial court does not recommend a sentence of life imprisonment without parole pursuant to division (D)(2)(a) of this section, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code and served pursuant to that section.

(c) If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole eligibility after serving thirty years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment, the court shall impose the sentence recommended by the jury upon the offender. If the trial jury recommends that the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D)(2)(a) of this section or a sentence of life imprisonment imposed under division (D)(2)(c) of this section, the court shall impose the sentence recommended by the jury upon the offender. If the trial jury recommends that a sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving proof beyond a reasonable doubt, or if the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the factors in mitigation of the imposition of the sentence of death, the trial jury shall impose one of the following sentences upon the offender:

(a) Except as provided in division (a) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after five full years of imprisonment;

(iii) Subject to division (D)(3)(a)(iv) of this section, life imprisonment with parole eligibility after five full years of imprisonment;



mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment under division (D) of this section, shall state in a separate opinion its specific findings of which of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

(C)(1) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed before January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the appellate court.

(2) Whenever the court or a panel of three judges imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered shall deliver the entire record in the case to the supreme court.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 146 v S 4 (Eff 9-21-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 180. Eff 1-1-97; 150 v H 184, § 1, eff. 3-23-05; 152 v S 10, § 1, eff. 1-1-08.

The effective date is set by § 3 of 152 v S 10.

The provisions of § 3 of H.B. 184 (150 v —) read as follows:

**SECTION 3.** Section 2929.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 180 and Am. Sub. S.B. 269 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

The effective date is set by section 3 of HB 180.

See provisions, § 4 of HB 180 (146 v —) following RC § 2921.34.

The provisions of §§ 3, 4 of SB 269 read as follows:

**SECTION 3.** That Section 5 of Am. Sub. S.B. 2 of the 121st General Assembly be amended to read as follows:

"Sec. 5. The provisions of the Revised Code in existence prior to July 1, 1996, shall apply to a person upon whom a court imposed a term of imprisonment prior to that date and, notwithstanding division (B) of section 1.58 of the Revised Code, to a person upon whom a court, on or after that date and in accordance with the law in existence prior to that date, imposes a term of imprisonment for an offense that was committed prior to that date.

The provisions of the Revised Code in existence on and after July 1, 1996, apply to a person who commits an offense on or after that date."

**SECTION 4.** That existing Section 5 of Am. Sub. S.B. 2 of the 121st General Assembly is hereby repealed.

**§ 2929.04 Criteria for imposing death or imprisonment for a capital offense.**

(A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or mental retardation and developmentally disabled facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or know to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or the offender, not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of

offense to which the victim was a witness in the aggravated murder was a witness who was purposely killed in retaliation for any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of a person thirteen years of age at the time of the offense, and either the offender was the principal offender in the commission of the offense or the offender committed the offense with design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense.

(B) If one or more of the offenses listed in division (A) of this section are proved beyond a reasonable doubt, and if the offender, at the time of the offense, was found at trial to be thirteen years of age or older at the time of the offense, the court, trial jury, or panel shall consider, and weigh against the aggravating circumstances of the offense, the history and characteristics of the offender, and all of the following factors:

(1) Whether the victim of the offense was a child;

(2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong influence;

(3) Whether, at the time of the commission of the offense, because of a mental disability, the offender lacked substantial capacity to appreciate the wrongfulness of the offender's conduct or to conform the conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant criminal record;

(6) If the offender was a participant in the offense and the offender was not the principal offender, the degree of the offender's participation in the offense and the offender's participation in the acts that led to the commission of the offense;

(7) Any other factors that are relevant to the determination of whether the offender should be sentenced to death.

(C) The defendant shall be given the opportunity to present evidence of the factors listed in division (B) of this section and of any other factors that may be relevant to the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender if the court, trial jury, or panel of three judges agrees, after weighing the aggravating and mitigating circumstances the offender was found to have committed, that the offender should be sentenced to death.

**HISTORY:** 134 v H 511 (Eff 1-1-74); 139 v S 1 (Eff 10-19-81); 147 v S 32 (Eff 8-6-97); 147 v S 269 (Eff 7-1-96); 147 v S 193 (Eff 12-29-98); 149 v S 10, § 1, eff. 1-1-08.

The provisions of § 3 of SB 193 (147 v S 32) are presented in this act as a composite of the section as amended by H.B. 151 and Am. S.B. 32 of the 122nd General Assembly. The language of neither of the acts shown

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committed while the offender ve the offender was at large after. As used in division (A)(4) of this the same meaning as in section Code, except that detention do on, institutionalization, or confin facility or mental retardation and facility unless at the time of the se either of the following circum

in the facility as a result of bene of a section of the Revised Code is under detention as a result pleading guilty to a violation of Code.

nse at bar, the offender was on essential element of which was the r attempt to kill another, or the of a course of conduct involving attempt to kill two or more person

ie offense was a law enforcement ction 2911.01 of the Revised Code l reasonable cause to know or ent officer as so defined, and eff of the commission of the offe tim's duties, or it was the offe ll a law enforcement officer

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ie aggravated murder was a with as purposefully killed to prevent any criminal proceeding as not committed during the commission, or flight immedi t or attempted commission

offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposefully killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 [2929.02.3] of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

(1) Whether the victim of the offense induced or facilitated it;

(2) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

(8) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be considered pursuant to divisions (D)(2) and (3) of section 2929.04 of the Revised Code by the trial court, trial jury, or panel of three judges against the aggravating circumstances the offender was found guilty of committing.

HISTORY: 134 v H 511 (EF 1-1-74); 139 v S 1 (EF 1-1-74); 147 v S 32 (EF 8-6-97); 147 v H 151 (EF 9-16-97); 193 (EF 12-29-98); 149 v S 184. EF 5-15-2002.

Provisions of § 3 of SB 193 (147 v —) read as follows: SECTION 3. Section 2929.04 of the Revised Code is presented as a composite of the section as amended by both Sub. Am. S.B. 32 of the 122nd General Assembly, with the language of neither of the acts shown in capital letters. This is

in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

§ 2929.05 Appellate review of death sentence.

(A) Whenever sentence of death is imposed pursuant to sections 2929.03 and 2929.04 of the Revised Code, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall review upon appeal the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed and, except as otherwise provided in this section, shall conduct the review in accordance with the Rules of Appellate Procedure.

(C) At any time after a sentence of death is imposed pursuant to section 2929.022 [2929.02.2] or 2929.03 of the Revised Code, the court of common pleas that sentenced the offender shall vacate the sentence if the offender did not present evidence at trial that the offender was not eighteen years of age or older at the time of the commis-



pealed, 140 v H 291, § 2, (C) (206), ch 34, § 5; Bureau of Code Revision, 7-1-83.

costs on execution for felony.

transportation of prisoners.

take one guard for every prisoner transported to a correctional institution. The sheriff may authorize a larger number of guards in the application of the sheriff, in the order of the judge shall be certified to the court of common pleas under the seal of the sheriff shall deliver the order with the receipt in charge of the correctional institution.

main reimbursement for the cost of transportation for indigent convicts to the court of common pleas shall be on cost bill for each indigent convict pursuant to this section for a distance of more than a mile from the county seat to the correctional institution and return for the sheriff's fee of five cents a mile from the institution to the court of common pleas. The cost of miles shall be computed by the sheriff's clerk's duties under this division (B) of section 2949.19 of the

155-6; 113 v 123(207), ch 34, § 5; Bureau of Code Revision, 10-1-53; 128 v 542 (Eff 7-1-59); 139 v H 694 (Eff 11-15-81); 140 v H 571 (Eff 10-6-94); 148 v H 283.

by section 162 of HB 283.

pealed, 140 v H 291, § 2, (C) (207), ch 34, § 7; Bureau of Code Revision, 7-1-83; 139 v H 694.

certification and payment of cost bills.

state payment of criminal costs.

division (B) of this section, the clerk of the court of common pleas shall report to the state public defender which an indigent person is in all cases in which reimbursement is provided pursuant to section 2949.20 of the Revised Code, and certification that are prepared pursuant to section 2949.19 of the Revised Code. The reports shall be filed with the state public defender within thirty days after the term prescribed by the state public defender accompanied by a certification that in all cases listed in the report the person is indigent and convicted. The case is reported pursuant to section 2949.19 of the Revised Code and that for each transported pursuant to section 2949.19 of the Revised Code the convicted felon was determined by the state public defender shall review the report in this division and prepare a transcript and a quarterly subsidy voucher for the county for the amounts the state public defender shall be correct. To compute the quarterly subsidy, the state public defender first shall subtract the total of all transportation cost vouchers that the state public defender approves for payment for the quarter from one-fourth of the state public defender's total appropriation for criminal justice subsidy for the fiscal year of which the quarter is in. The state public defender then shall compute a base subsidy amount per case by dividing the remainder by the total number of cases from all counties the state public defender approves for subsidy for the quarter. The quarterly subsidy voucher for each county shall then be the product of the base subsidy amount times the number of cases submitted by the county and approved for subsidy for the quarter. Payment shall be made to the clerk of the court of common pleas from the municipal court. Upon receipt of the quarterly subsidy, the clerk shall pay to the clerk of the municipal court, for municipal court costs in those cases, an amount that does not exceed fifteen dollars per case, shall pay foreign sheriffs for their services, and shall deposit the remainder of the subsidy to the credit of the general fund of the county. The clerk of the court of common pleas then shall stamp the clerk's records "subsidy costs satisfied."

county for the amounts the state public defender shall be correct. To compute the quarterly subsidy, the state public defender first shall subtract the total of all transportation cost vouchers that the state public defender approves for payment for the quarter from one-fourth of the state public defender's total appropriation for criminal justice subsidy for the fiscal year of which the quarter is in. The state public defender then shall compute a base subsidy amount per case by dividing the remainder by the total number of cases from all counties the state public defender approves for subsidy for the quarter. The quarterly subsidy voucher for each county shall then be the product of the base subsidy amount times the number of cases submitted by the county and approved for subsidy for the quarter. Payment shall be made to the clerk of the court of common pleas from the municipal court. Upon receipt of the quarterly subsidy, the clerk shall pay to the clerk of the municipal court, for municipal court costs in those cases, an amount that does not exceed fifteen dollars per case, shall pay foreign sheriffs for their services, and shall deposit the remainder of the subsidy to the credit of the general fund of the county. The clerk of the court of common pleas then shall stamp the clerk's records "subsidy costs satisfied."

(B) If notified by the state public defender under section 2949.201 [2949.20.1] of the Revised Code that, for a specified state fiscal year, the general assembly has not appropriated funding for reimbursement payments pursuant to division (A) of this section, the clerk of the court of common pleas is exempt for that state fiscal year from the fees imposed upon the clerk by division (A) of this section and by sections 2949.17 and 2949.20 of the Revised Code. Upon providing the notice described in this division, the state public defender is exempt for that state fiscal year from the duties imposed upon the state public defender by division (A) of this section.

HISTORY: GC § 13455-8; 113 v 123(207), ch 34, § 8; Bureau of Code Revision, 10-1-53; 130 v 668 (Eff 10-14-63); 138 v H 204 (Eff 7-30-79); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 140 v H 462 (Eff 3-28-85); 141 v H 201 (Eff 7-1-85); 142 v H 171 (Eff 7-1-87); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

§ 2949.20 Costs in case of reversal.

In any case of final judgment of reversal as provided in section 2953.07 of the Revised Code, whenever the state of Ohio is the appellee, the clerk of the court of common pleas of the county in which sentence was imposed shall certify the case to the state public defender for reimbursement in the report required by section 2949.19 of the Revised Code, subject to division (B) of section 2949.19 of the Revised Code.

HISTORY: GC § 13455-9; 115 v 532, § 2; Bureau of Code Revision, 10-1-53; 138 v H 204 (Eff 7-30-79); 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

§ 2949.20.1 § 2949.201 Notification to clerks of courts of common pleas as to status of state appropriations.

On or before the date specified in division (B) of this section, in each state fiscal year, the state public

defender shall notify the clerk of the court of common pleas of each county whether the general assembly has, or has not, appropriated funding for that state fiscal year for reimbursement payments pursuant to division (A) of section 2949.19 of the Revised Code.

(B) The state public defender shall provide the notification required by division (A) of this section on or before whichever of the following dates is applicable:

(1) If, on the first day of July of the fiscal year in question, the main operating appropriations act that covers that fiscal year is in effect, on or before the thirty-first day of July;

(2) If, on the first day of July of the fiscal year in question, the main operating appropriations act that covers that fiscal year is not in effect, on or before the day that is thirty days after the effective date of the main operating appropriations act that covers that fiscal year.

HISTORY: 139 v H 694 (Eff 11-15-81); 140 v H 291 (Eff 7-1-83); 148 v H 283. Eff 9-29-99.

The effective date is set by section 162 of HB 283.

[DEATH SENTENCE]

§ 2949.21 Conveyance to reception facility; assignment to institution.

A writ for the execution of the death penalty shall be directed to the sheriff by the court issuing it, and the sheriff, within thirty days and in a private manner, shall convey the prisoner to the facility designated by the director of rehabilitation and correction for the reception of the prisoner. For conducting the prisoner to the facility, the sheriff shall receive like fees and mileage as in other cases, when approved by the warden of the facility. After the procedures performed at the reception facility are completed, the prisoner shall be assigned to an appropriate correctional institution, conveyed to the institution, and kept within the institution until the execution of his sentence.

HISTORY: GC § 13456-1; 113 v 123(207), ch 35; Bureau of Code Revision, 10-1-53; 144 v S 359 (Eff 12-22-92); 145 v H 571. Eff 10-6-94.

§ 2949.22 Execution of death sentence.

(A) Except as provided in division (C) of this section, a death sentence shall be executed by causing the application to the person, upon whom the sentence was imposed, of a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death. The application of the drug or combination of drugs shall be continued until the person is dead. The warden of the correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the death sentence is executed.

(B) A death sentence shall be executed within the walls of the state correctional institution designated by the director of rehabilitation and correction as the location for executions, within an enclosure to be prepared for that purpose, under the direction of the warden of the institution or, in the warden's absence, a deputy warden, and on the day designated by the judge passing sentence or otherwise designated by a court in the course of any





# CONSTITUTION OF THE UNITED STATES

EFFECTIVE 1789  
WITH ALL AMENDMENTS TO 1994

We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I

SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

SECTION 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the

Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of Chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

SECTION 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of Absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than

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accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

SECTION 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

## ARTICLE II

SECTION 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

The Electors shall meet in their respective States, and vote by Ballot for two persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President.

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes;

which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to Discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

SECTION 4. The President, Vice President and all civil Officers of the United States, shall be removed from

Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

### ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases; in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

SECTION 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

### ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on

Claim of the Party to whom such Service or Labour may be due.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

SECTION 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion, and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

### ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

### ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

### ARTICLE VII

The Ratification of the Conventions of nine States shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of

America the Twelfth. IN WITNESS whereunto subscribed our Names

G. WASHINGTON  
and Deputy for

Attest.—WILLIAM JACKSON,  
New Hampshire.—John Lar  
Massachusetts.—Nathaniel C  
Connecticut.—Wm. Saml. J  
New York.—Alexander Hami  
New Jersey.—Will: Livingstc  
Paterson, Jona: Dayton.

# AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES

*Articles in addition to, and amendments of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth article of the original Constitution.*

## AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.  
(Effective 1791)

## AMENDMENT II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.  
(Effective 1791)

## AMENDMENT III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.  
(Effective 1791)

## AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.  
(Effective 1791)

## AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.  
(Effective 1791)

## AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.  
(Effective 1791)

## AMENDMENT VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.  
(Effective 1791)

## AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.  
(Effective 1791)

## AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.  
(Effective 1791)

## AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.  
(Effective 1791)

## AMENDMENT XI

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.  
(Effective 1798)

## AMENDMENT XII

The Electors shall meet in their respective states and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives; open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the

President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.—The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

(Effective 1804)

AMENDMENT XIII

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

(Effective 1865)

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Constitution

Due process, OConst art I, § 16

Equal protection, OConst art I, § 2

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Ohio Constitution

Apportionment, OConst art XI, §§ 1, 2, 3

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the

United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Ohio Constitution

Qualification for office, OConst art II, § 5

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Ohio Constitution

Public debt, OConst art VIII, §§ 1, 3

SECTION 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

(Effective 1868)

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

(Effective 1870)

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

(Effective 1913)

AMENDMENT XVII

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualification requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies. Provided That the legislature of any State may empower its executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

(Effective 1913)

AMENDMENT XVIII

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of

liquors within, the importation thereof from the United States, and the exportation thereof from the United States, shall be prohibited.

SECTION 2. The Congress and the States shall have concurrent power to enforce this legislation.

SECTION 3. This article shall be ratified as an amendment to the Constitution, within seven years from the date of its submission hereof to the States by the Congress.

(Effective 1919)

AMENDMENT XIX

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

(Effective 1920)

AMENDMENT XX

SECTION 1. The terms of the President and Vice President shall end at noon on the 20th day of January, of the years in which the terms of Senators and Representatives end. If a President or Vice President has died or resigned, his term shall end if this article had not taken effect. The terms of their successors shall then begin.

SECTION 2. The Congress shall assemble every year, and such meeting shall begin on the 3rd day of January, unless they shall by law provide otherwise.

SECTION 3. If, at the time fixed by the Constitution for the beginning of the term of the President, the President elect shall have died, or if he shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified. The Congress may by law provide for the case in which neither a President elect nor a Vice President elect shall have qualified, declaring who shall act in the manner in which one who is acting as President shall act accordingly.

SECTION 4. The Congress may provide for the case of the death of any of the electors in the manner in which one who is acting as President shall act accordingly. The Vice President elect shall have qualified.

SECTION 5. Sections 1 and 2 shall take effect on the 3rd day of October following the ratification of this article.

SECTION 6. This article shall be ratified as an amendment to the Constitution by the legislatures of three-fourths of the States within seven years from the date of its submission hereof to the States by the Congress.

(Effective 1933)

# CONSTITUTION OF THE STATE OF OHIO

ADOPTED MARCH 10, 1851  
WITH AMENDMENTS CURRENT TO MARCH 13, 2006

## ARTICLE I: BILL OF RIGHTS

### Section

- 1 Right to freedom and protection of property.
- 2 Right to alter, reform, or abolish government, and repeal special privileges.
- 3 Right to assemble together.
- 4 Bearing arms; standing armies; subordination of military power.
- 5 Trial by jury; reform in civil jury system.
- 6 Slavery and involuntary servitude.
- 7 Rights of conscience; education; necessity of religion and knowledge.
- 8 Writ of habeas corpus.
- 9 Bail; cruel and unusual punishments.
- 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.
- 10a Rights of victims of crime.
- 11 Freedom of speech and of the press; libel.
- 12 Transportation, etc., for crime.
- 13 Quartering of troops.
- 14 Search warrants and general warrants.
- 15 No imprisonment for debt.
- 16 Redress in courts.
- 17 Hereditary privileges, etc.
- 18 Suspension of laws.
- 19 Inviolability of private property.
- 19a Damage for wrongful death.
- 20 Powers reserved to the people.

### § 1 Right to freedom and protection of property.

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

### § 2 Right to alter, reform, or abolish government, and repeal special privileges.

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly.

### § 3 Right to assemble together.

The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their representatives; and to petition the general assembly for the redress of grievances.

### § 4 Bearing arms; standing armies; subordination of military power.

The people have the right to bear arms for their defense and security; but standing armies, in time of peace, are

dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

### § 5 Trial by jury; reform in civil jury system.

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

HISTORY: (As amended September 3, 1912.)

### § 6 Slavery and involuntary servitude.

There shall be no slavery in this state; nor involuntary servitude, unless for the punishment of crime.

### § 7 Rights of conscience; education; necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

### § 8 Writ of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

### § 9 Bail; cruel and unusual punishments.

All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the

type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The General Assembly shall fix by law standards to determine whether a person who is charged with a felony where the proof is evident or the presumption great poses a substantial risk of serious physical harm to any person or to the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(b) of the Constitution of the state of Ohio.

(As amended January 1, 1998.)

### § 10 Trial of accused persons and their rights; depositions by state and comment on failure of accused to testify in criminal cases.

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

**HISTORY:** (As amended September 3, 1912.)

### § 10a Rights of victims of crime.

Victims of criminal offenses shall be accorded fairness, dignity, and respect in the criminal justice process, and, as the general assembly shall define and provide by law, shall be accorded rights to reasonable and appropriate notice, information, access, and protection and to a meaningful role in the criminal justice process. This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this constitution, and does not create any cause of action for compensation or damages against the state, any political subdivision of the state, any officer, employee, or agent of the state or of any political subdivision, or any officer of the court.

(Adopted November 8, 1994)

### § 11 Freedom of speech and of the press; libel.

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

### § 12 Transportation, etc., for crime.

No person shall be transported out of the state, for any offense committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

### § 13 Quarters of troops.

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

### § 14 Search warrants and general warrants.

The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized.

### § 15 No imprisonment for debt.

No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

### § 16 Redress in courts.

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

[Suits against the state.] Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

**HISTORY:** (As amended September 3, 1912.)

### § 17 Hereditary privileges, etc.

No hereditary emoluments, honors, or privileges shall ever be granted or conferred by this state.

### § 18 Suspension of laws.

No power of suspending laws shall ever be exercised except by the general assembly.

### § 19 Inviolability of private property.

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war

or other public exigency, impudate seizure or for the pur roads, which shall be open to compensation shall be made in all other cases, where private public use, a compensation of money, or first secured by a compensation shall be assessment for benefits to any prop

The provisions of 151 v S 167

SECTION 1. As used in Secti (A) "Blighted area" has the sam the Revised Code, but also in corporation.

(B) "Public body" means any er any county, municipal corporator authority, or other political subd power to take private property b

SECTION 2. (A) Notwithstanc Code to the contrary, until Dec shall use eminent domain to ta owner, private property that is determined by the public body, v taking is economic developmen ownership of that property being

(B)(1) Until December 31, eminent domain to take, without property that is not within a blig public body, when the primary p development that will ultimate property being vested in anoth following shall apply:

(a) The Ohio Public Works t distribute to the public body any ment program created under Ch

(b) The Department of Develo ute to the public body any fun program created under section 1

(c) The public body shall not re capital purposes in any act of the

(2) Until December 31, 2006, e funds described in division (B)(1 writing to the grantor of the fun used its eminent domain authorit; this act to take private property established by this act.

(C) Divisions (A) and (B) of thi of eminent domain for the taking follows:

(1) In the construction, mainte, or walkways, paths, or other v including rights of way immediate including, but not limited to, s granted under Title LV of the Re

(2) For a public utility purpose

(3) By a common carrier;

(4) For parks or recreation are

(5) In the construction, mainte grounds used for governmental p

SECTION 3. (A) There is her Force to Study Eminent Domain the State. The Task Force shall co members:

(1) Three members of the Hou by the Speaker of the House of with the Minority Leader of the Speaker of the House of Represer members the Speaker appoints t Task Force.

(2) Three members of the Sena the Senate in consultation with th The President of the Senate shall the President appoints to serve Force.

cases, proceedings shall sticable, so as to prevent suggested to the jury by ents or offers of proof or of the jury.

This rule precludes taking substantial rights although ention of the court.

**Questions**

ity generally. Prelimi- icalification of a person to privilege, or the admissi- ined by the court, subject (B). In making its deter- rules of evidence except

on fact. When the rele- on the fulfillment of a admit it upon, or subject sufficient to support a condition.

gs on the admissibility of e conducted out of the other preliminary matters hearing of the jury when

The accused does not, by atter, become subject to uses in the case.

This rule does not limit before the jury evidence

**Admissibility**

missible as to one party or ole as to another party or the court, upon request lence to its proper scope

**of or Related Writ- nts**

atement or part thereof is se party may require the other part or any other hich is otherwise admis- ss to be considered con-

**E II OTICE**

**otice of Adjudicative**

le governs only judicial the facts of the case. ally noticed fact must be pute in that it is either (1)

generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(C) **When discretionary.** A court may take judicial notice, whether requested or not.

(D) **When mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.

(E) **Opportunity to be heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(F) **Time of taking notice.** Judicial notice may be taken at any stage of the proceeding.

(G) **Instructing jury.** In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

**ARTICLE III PRESUMPTIONS**

**RULE 301. Presumptions in General in Civil Actions and Proceedings**

In all civil actions and proceedings not otherwise provided for by statute enacted by the General Assembly or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

**RULE 302. [Reserved]**

**ARTICLE IV RELEVANCY AND ITS LIMITS**

**RULE 401. Definition of "Relevant Evidence"**

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

**RULE 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible**

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible.

**RULE 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Undue Delay**

(A) **Exclusion mandatory.** Although relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury.

(B) **Exclusion discretionary.** Although relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence.

(Amended, eff 7-1-96)

**RULE 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes**

(A) **Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, subject to the following exceptions:

(1) **Character of accused.** Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(2) **Character of victim.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor is admissible; however, in prosecutions for rape, gross sexual imposition, and prostitution, the exceptions provided by statute enacted by the General Assembly are applicable.

(3) **Character of witness.** Evidence of the character of a witness on the issue of credibility is admissible as provided in Rules 607, 608, and 609.

(B) **Other crimes, wrongs or acts.** Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(Amended, eff 7-1-07)

**RULE 405. Methods of Proving Character**

(A) **Reputation or opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.

(B) **Specific instances of conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of his conduct.

**RULE 406. Habit; Routine Practice**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant

A-11

