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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 392
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 392's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Stewart and Plummer

Local Impact Statement Procedure Required: No

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Highlights

- The bill adds nitrogen hypoxia asphyxiation to the list of methods by which a sentence of death may be executed and mandates nitrogen hypoxia asphyxiation under certain circumstances.
- The Department of Rehabilitation and Correction will incur one-time costs to update policies and procedures and to train staff in administering this new method of execution.

Detailed Analysis

Nitrogen hypoxia asphyxiation

The bill allows a person upon whom a death sentence was imposed to elect to have the sentence carried out by lethal injection or by nitrogen hypoxia. The choice must be made in writing and must be submitted to the Director of the Department of Rehabilitation and Correction (DRC) one week before the court-ordered day of execution. If a person does not timely elect nitrogen hypoxia, does not elect either nitrogen hypoxia or lethal injection, or elects lethal injection, the death sentence must be executed by lethal injection pursuant to continuing law. However, if, at the time a death sentence is to be executed, the death sentence cannot be executed by lethal injection, the death sentence must be executed by nitrogen hypoxia as if the person had elected nitrogen hypoxia under the bill.

DRC will incur one-time costs to update policies and procedures and to train staff in administering this new method of execution. Costs to procure the substance is unknown and will depend on availability and the costs charged by the vendor, if needed.

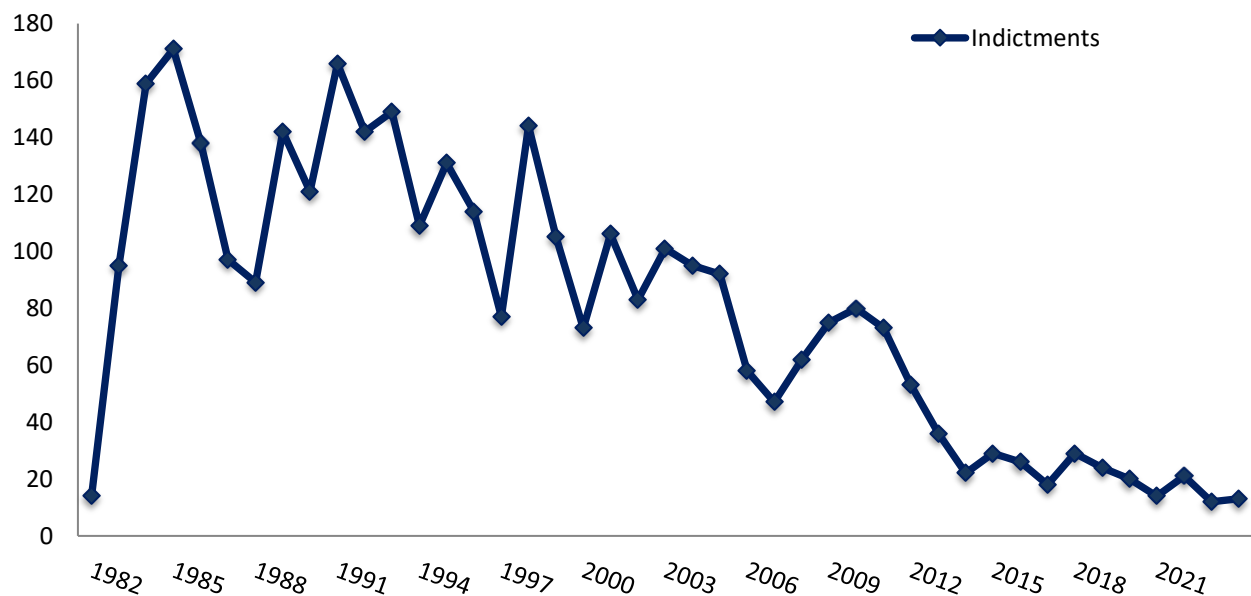
Existing death sentences

The number of individuals who may elect nitrogen hypoxia is unknown. Additionally, it is unknown to what effect this change in execution method will ultimately have on the current state of executions in the state. Due to challenges in carrying out death sentences related to procuring certain drugs for lethal injection, the last execution in Ohio took place in July 2018. In December 2020, due to an inability to procure execution drugs, Governor DeWine announced that the state must choose a method of execution other than lethal injection before Ohio can resume executions.

As seen in the chart below, the number of capital indictments filed annually has significantly decreased statewide since 1981, the year in which the death penalty was reinstated in Ohio. As of December 31, 2023, 121 death sentences still remain active in Ohio, including those pending in state and federal court.¹

In January 2024, Alabama became the first state in the nation to use nitrogen hypoxia as a method of execution.

Annual Capital Indictments in Ohio, CY 1981-CY 2023



¹ See the [2023 Capital Crimes Annual Report \(PDF\)](#), which is available on the Office of the Attorney General's website under Publications: ohioattorneygeneral.gov.

Disclosure of execution identifying information

The bill also prohibits a person from recklessly disclosing “execution identifying information,” with limited exceptions. A person who violates the prohibition is guilty of “disclosure of confidential information,” a fourth degree misdemeanor under current law.² A fourth degree misdemeanor is punishable by a jail term of not more than 30 days, a fine of up to \$250, or both. The number of cases filed annually for any single jurisdiction would likely be negligible, if any.

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² “Execution identifying information” includes any record or information that directly or indirectly reveals a name, residential or business address, residential or business telephone number, day and month of birth, Social Security number, or professional qualifications of any person who participates in or administers the execution of a death sentence [or] any person that manufactures, compounds, imports, transports, distributes, prescribes, prepares, administers, or otherwise supplies any drugs or combination of drugs, active pharmaceutical ingredients, gas, or other material used in the execution of a death sentence, or any equipment used to administer any drugs or combination of drugs, active pharmaceutical ingredients, gas, or other material to any person during the execution of a death sentence.