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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

S.B. 103
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Introduced

Primary Sponsors: Sens. Antonio and S. Huffman

Local Impact Statement Procedure Required: No

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Highlights

- The Office of the State Public Defender could experience an annual savings in time and resources from not having to provide appellate representation in death penalty cases that is likely to be reallocated to other duties and responsibilities. There may also be a savings in money that may otherwise have been expended to reimburse counties for all or a portion of their costs incurred in the provision of legal representation to indigent defendants in death penalty cases.
- The Attorney General could experience an annual savings in time and resources that might otherwise have been expended to represent the state in certain appeals where an individual was sentenced to death and the appellate process has begun. Any such savings is likely to be reallocated to other duties and responsibilities.
- The Department of Rehabilitation and Correction would likely experience a substantial increase in incarceration expenditures in future years, as offenders that would otherwise have been executed under current law could end up serving considerably longer prison stays.
- County indigent defense systems could experience an expenditure savings in money that might otherwise have been expended to provide legal representation to indigent defendants in death penalty cases.
- County prosecutors and courts of common pleas may experience a savings effect, as the abolition of the death penalty may permit both to focus their time and effort on other legal matters.

Detailed Analysis

Overview

The bill abolishes the death penalty and instead generally requires a person convicted of, or that pleads guilty to, aggravated murder to be life imprisonment with parole eligibility after serving either 20 or 30 years of imprisonment, or without the possibility of parole. Although its effect may generate long-term savings for county criminal justice systems, the bill will likely create a long-term increase in the state's prison system, as the number of offenders serving life sentences would rise. The bill does not affect those death sentences imposed prior to the bill's effective date.

As of December 31, 2020, Ohio had 140 offenders on death row serving 142 death sentences (two people received two death sentences each). Of Ohio's 88 counties, 36 currently had one or more offenders on death row awaiting execution. The table below lists those counties along with the corresponding number of offenders on death row.

Offenders on Death Row by County*							
County	Number	County	Number	County	Number	County	Number
Hamilton	21	Clark	4	Medina	2	Erie	1
Cuyahoga	20	Mahoning	4	Portage	2	Fulton	1
Franklin	13	Warren	4	Ashland	1	Jefferson	1
Lucas	8	Allen	2	Ashtabula	1	Madison	1
Trumbull	8	Greene	2	Belmont	1	Noble	1
Butler	7	Guernsey	2	Brown	1	Richland	1
Summit	7	Lawrence	2	Clermont	1	Ross	1
Montgomery	6	Licking	2	Clinton	1	Vinton	1
Stark	6	Lorain	2	Delaware	1	Wood	1

*As of December 31, 2020

Abolishing the death penalty

It should be noted that actual cost and expenditure data is not readily available for all of the agencies involved in the investigation, prosecution, defense, adjudication, and post-conviction review. While the defense and incarceration costs can be estimated in some cases, no state or local agency maintains itemized bills that account for all of the time that state and local agencies spend over the lifetime of any given death penalty case. The following sections provide a description of where costs and savings may occur generally from the abolition of the death penalty.

County fiscal effects

The county is responsible for trying and sentencing defendants in aggravated murder cases regardless of whether there is a death specification. These costs include both the costs for the prosecution and public defense counsel, as many defendants in murder cases are indigent. Any aggravated murder trial, regardless of the presence of a death specification, will likely incur costs for expert witness consultation and testimony, psychologists, and investigators. Those costs are not likely to differ significantly based solely on the presence or absence of a death specification. However, death penalty cases are bifurcated, meaning there are two phases: a guilt phase and a penalty phase. As such, many of the costs incurred in the guilt phase tend to be duplicated in the penalty phase, thereby significantly increasing the overall costs to try a death penalty case.

Other costs, such as jury compensation, defense mitigation and prosecution experts, the number of defense attorneys required, and public defender compensation vary by case and by county. That said, courts, prosecutors, and public defenders may realize what might best be termed a savings effect, as the abolition of the death penalty, rather than producing an expenditure reduction, may instead permit them to allocate more time and effort on other legal matters. The general absence of expenditure data makes an estimation of that potential savings effect problematic.

State fiscal effects

Office of the Ohio Public Defender

The Office of the Ohio Public Defender has two notable roles and related expenses specific to death penalty cases.

Death Penalty Division. The Public Defender's Death Penalty Division provides competent legal counsel to indigent persons under the sentence of death (Ohio's death row inmates on direct appeal, state post-conviction, federal habeas corpus, and clemency appeals), as well as legal assistance, criminal investigation and mitigation, and trial services to private appointed attorneys in such cases. As the bill does not affect current death row inmates, there will be no immediate effect on the Death Penalty Division's workload and operating expenses.

County cost reimbursements. For the current FY 2020-FY 2021 biennium, the state substantially increased its share of the funding responsibility for indigent defense to the counties. Historically, the state reimbursed indigent defense costs at or below the statutory cap of 50%. As of FY 2020, instead of capping the reimbursement rate at 50% as under prior law, the state is now required to reimburse counties up to 100%, subject to available appropriations. In FY 2020, the reimbursement rate was 74%. The FY 2021 reimbursement rate is estimated at about 70%. Since death penalty trials are bifurcated and murder cases without a death specification are not, the Office of the Ohio Public Defender could realize some amount of savings in county reimbursement costs from not having to reimburse counties for representation during the penalty phase of a death penalty trial.

Ohio Attorney General

The Capital Crimes Unit within the Criminal Justice Section of the Office of the Attorney General works to uphold death sentences imposed by the state and assists prosecutors with capital litigation in state courts when requested and with responding to clemency requests prior

to execution. Subsequent to the bill's enactment, the Capital Crimes Unit will continue to work on matters related to existing death row inmates, but will no longer be needed to assist prosecutors with capital litigation.

Department of Rehabilitation and Correction

The Department of Rehabilitation and Correction (DRC) is responsible for housing all offenders sentenced to a prison term and for carrying out the execution of all state-imposed death sentences.

Incarceration costs

The total cost to incarcerate an offender sentenced to death versus an offender sentenced to life without parole (LWOP) ultimately depends on their length of stay in prison. That said, by abolishing the death penalty, DRC would experience an increase in incarceration costs, as certain offenders would be spending longer periods in prison than would be the case under current law. This increase, however, would not occur immediately, but would happen gradually over time, as offenders who could have been sentenced to death under current law are incarcerated for more than the average length of incarceration prior to execution (17.2 years).

Death row. Death row incarceration costs are not calculated separately by DRC. Therefore, the average cost per day to house an offender in prison is being used for cost comparison purposes. For FY 2020, that daily cost was \$83.72, which translates to \$30,556 per year. The amount of time spent on death row since executions resumed in 1999 has ranged from three years to about 37 years, with an average time spent on death row of 17.2 years between sentence and execution. Using the above listed per diem, it would cost DRC \$525,563 to house an offender that serves the average 17.2 years on death row.

Life sentence without parole. A sentence of life without parole (LWOP) became a sanctioning tool available to Ohio's trial courts in July 1996. Since that time, 719 offenders have received an LWOP sentence. While there is no readily available data regarding time served for this population, the average years served among aggravated murder, murder, and rape offenders paroled on life sentences in calendar year (CY) 2020 was 26.9 years. Presumably, depending upon the offender's age at the time of commitment, an LWOP offender would serve a longer sentence.

According to the DRC Commitment Report for CY 2020, the average age of an offender at the time of their commitment to prison was 34.8 years. According to the U.S. Department of Health and Human Services, the average age of death in the United States in CY 2020 was 77.8 years; however, it has been purported that incarcerated individuals tend to age at a faster rate than the general population.

As an example, if we assume an LWOP offender is around 35 years of age at the time of commitment and that they will die in prison at around 78 years of age, their time served will be approximately 43 years. At an annual incarceration cost of \$30,556 per offender, the total cost of incarcerating that LWOP-sentenced offender would be around \$1.3 million (\$30,556 annual incarceration cost x 43 years). In this case, the net increase to DRC factoring in the 17.2 years on average that an offender spends on death row prior to execution would be somewhere around \$800,000.

This figure does not incorporate the likelihood that, as an LWOP-sentenced offender ages, their health will deteriorate and the costs for the state to provide appropriate health care will

rise. This generally reflects the cumulative effect of an unhealthy lifestyle coupled with a prison environment that is not conducive to healthy living.

Execution costs

DRC is also responsible for carrying out all state-imposed executions, which take place during regular business hours, and are carried out by volunteer staff members. Lethal injection is the method of execution used in Ohio; however, there have been no executions since July 2018 and in February 2019, Governor DeWine halted executions after continuing litigation surrounding Ohio's lethal injection protocol. Since the state is not currently carrying out executions, the bill will not have any impact on execution costs for DRC. If the state were to resume executions, the bill would otherwise result in a savings effect.