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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 259
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 259's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Schmidt and A. Miller

Local Impact Statement Procedure Required: No

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Highlights

- **Death penalty.** The bill abolishes the death penalty and instead generally requires a person who is convicted of or pleads guilty to aggravated murder be sentenced to life imprisonment with parole eligibility after serving 20 or 30 years, or life imprisonment without the possibility of parole.
 - The Office of the State Public Defender may realize some amount of savings in county reimbursement costs from not having to reimburse for representation during the penalty phase of a death penalty trial (savings likely to be shifted to other indigent defense services).
 - The Attorney General may experience an annual savings in time and resources that might otherwise have been expended to represent the state in post-conviction death penalty appeals that would be reallocated to other duties and responsibilities.
 - The Department of Rehabilitation and Correction may experience a gradual increase in incarceration expenditures over time, as people that may have otherwise been executed under current law end up serving presumably longer prison terms. Courts of common pleas, county prosecutors, and public defenders may experience a savings effect, as the abolition of the death penalty may permit both to focus their time and effort on other cases and legal matters.
- **Victims of crime.** The bill appropriates \$10.0 million in FY 2024 to GRF line item 055441, Victims of Crime, for the Attorney General's Crime Victim Compensation Program.

Detailed Analysis

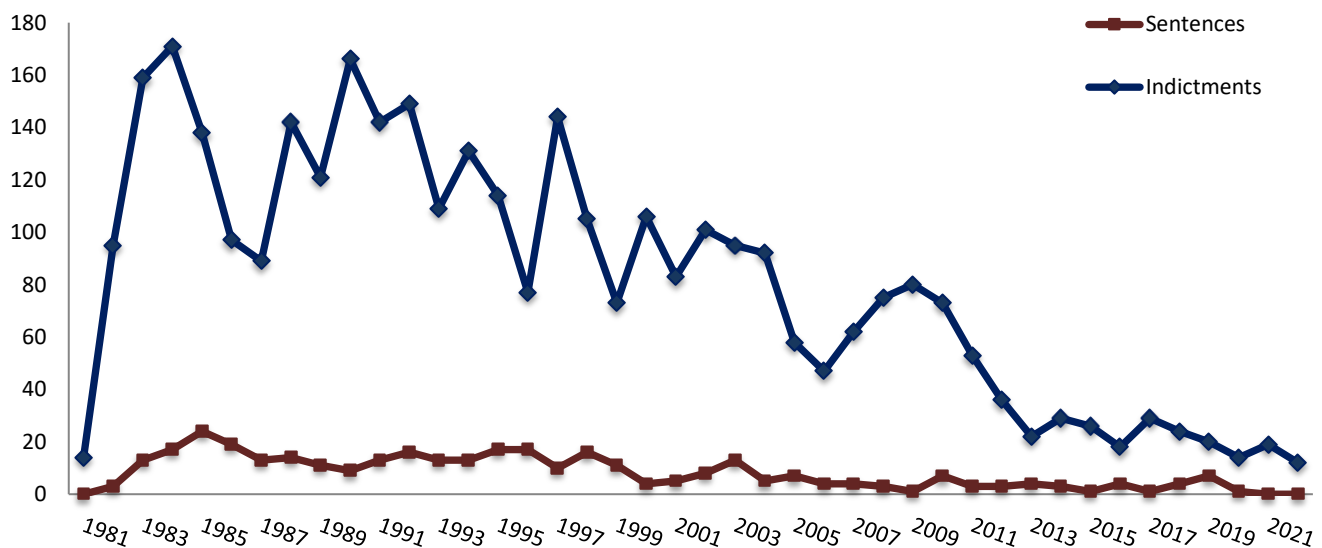
The bill abolishes the death penalty and instead generally requires a person who is convicted of or pleads guilty to aggravated murder be sentenced to life imprisonment with parole

October 3, 2023

eligibility after serving 20 or 30 years, or life imprisonment without the possibility of parole. Although its effect may generate long-term savings for county criminal justice systems, the bill may also create a gradual long-term increase in incarceration costs for the state's prison system, as more people may be serving a life sentence. The bill does not affect those death sentences imposed prior to the bill's effective date, or those currently undergoing resentencing or appellate proceedings.

The number of individuals who will ultimately receive a life sentence in lieu of a state-imposed death sentence as a result of the abolition of the death penalty is indeterminate but will likely be relatively small when compared to overall criminal adjudications. As seen in the chart below, the number of capital indictments and imposition of death sentences suggests that statewide, the pursuit of the death penalty has significantly decreased since 1981, the year in which the death penalty was reinstated in Ohio. For calendar years (CYs) 2021 and 2022, there were no death sentences imposed and for CY 2019 there was only one. Additionally, due to challenges in carrying out death sentences related to procuring certain drugs, the last execution 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. To date, an alternative method has not been selected. The remainder of this analysis examines the potential impact to criminal justice systems at both the state and local levels.

Capital Indictments and Death Sentences, 1981-2022



County fiscal effects

The county is responsible for adjudicating and sentencing defendants in aggravated murder cases, including those with a death specification, and generally incurs the costs for both the prosecution and defense, as many aggravated murder defendants are indigent. Defense costs may be partially offset by assistance from the State Public Defender in the form of reimbursement, to the extent that funding is available. All aggravated murder trials are likely to involve 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, since death penalty cases are bifurcated (meaning they have two phases: a guilt phase and a penalty phase), many of the costs incurred in the guilt phase tend to be duplicated in the penalty phase, thereby increasing the overall costs to try a death penalty case. Other costs, such as jury compensation, the number of defense attorneys required, and public defender compensation vary by case and by county.

As a result, the abolition of the death penalty may decrease expenditures related to certain aggravated murder cases and potentially permit courts of common pleas, county prosecutors, and public defenders to allocate more time and effort to other cases and legal matters.

State fiscal effects

Office of the Ohio Public Defender

The Public Defender's Death Penalty Division provides legal counsel to indigent people on Ohio's death row 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.

The Office of the Ohio Public Defender also subsidizes counties to provide legal counsel to indigent persons in criminal and juvenile matters, including death penalty cases. Since death penalty trials are bifurcated and murder cases without a death specification are not, there may be some amount of savings in county reimbursement costs from not having to reimburse counties for representation provided during the penalty phase of a death penalty trial. Any savings are likely to be shifted to other indigent defense services.

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 county prosecutors with capital litigation in state courts and 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. Any impacted staff are likely to be reallocated to other duties and responsibilities.

Department of Rehabilitation and Correction

The cost to incarcerate a person sentenced to death versus a person sentenced to life imprisonment with parole eligibility after serving 20 or 30 years, or life without parole, ultimately depends on their length of stay in prison. That said, abolition of the death penalty may result in a gradual increase over time in the Department of Rehabilitation and Correction's (DRC) annual incarceration costs, as people who may otherwise have been sentenced to death and executed under existing law would presumably serve longer prison terms. However, due to recent trends regarding the pursuit and imposition of the death penalty in Ohio, future inmate populations

would likely only be minimally impacted. The average cost for DRC to house a person in FY 2023 was \$103.08 per day or \$37,624 (\$103.08 x 365 days) per year.¹

Existing death sentences

As of December 31, 2022, Ohio had 128 people serving 130 death sentences (two people received two death sentences each).² Of Ohio's 88 counties, 35 had one or more people on death row. The table below lists those counties and the corresponding number of people on death row.

| Death Row Active Cases by County (As of December 31, 2022) | | | | | | | |
|--|--------|----------|--------|-----------|--------|--------------|------------|
| County | Number | County | Number | County | Number | County | Number |
| Hamilton | 20 | Mahoning | 4 | Medina | 2 | Fulton | 1 |
| Cuyahoga | 18 | Stark | 4 | Portage | 2 | Jefferson | 1 |
| Franklin | 11 | Warren | 4 | Ashland | 1 | Madison | 1 |
| Trumbull | 8 | Allen | 2 | Ashtabula | 1 | Noble | 1 |
| Lucas | 7 | Greene | 2 | Belmont | 1 | Richland | 1 |
| Summit | 7 | Guernsey | 2 | Brown | 1 | Ross | 1 |
| Butler | 6 | Lawrence | 2 | Clinton | 1 | Vinton | 1 |
| Montgomery | 6 | Licking | 2 | Delaware | 1 | Wood | 1 |
| Clark | 4 | Lorain | 2 | Erie | 1 | Total | 130 |

The majority of people on death row are housed at the Chillicothe Correctional Facility, a lower level security facility that serves Level 1 and Level 2 security classifications, as well as death row. As of April 1, 2023, the average age of a person on death row was 54.8 years and the average time served was nearly 21 years.

Victims of crime appropriation

The bill makes a supplemental appropriation of \$10.0 million in FY 2024 under GRF line item 055441, Victims of Crime, under the budget of the Attorney General. The bill would increase the \$9.0 million FY 2024 appropriation provided by H.B. 33 of the 135th General Assembly, the

¹ DRC does not calculate death row or "life without parole" incarceration costs separately from the general population. Unlike some other states, death row inmates in Ohio are generally housed in a medium rather than maximum security facility.

² See the [2022 Capital Crimes Annual Report \(PDF\)](#), which is available on the Office of the Attorney General's website under Publications: ohioattorneygeneral.gov.

main operating budget, bringing the total to \$19.0 million. This line item is used for the Attorney General's Crime Victim Compensation Program.