OHIO LEGISLATIVE SERVICE COMMISSION

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Office of Research and Drafting

Legislative Budget Office

H.B. 372
136th General Assembly

Fiscal Note & Local Impact Statement

Click here for H.B. 372's Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Abrams and Plummer

Local Impact Statement Procedure Required: Yes

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Highlights

- The bill expands the class of individuals who could be death penalty eligible. If the bill were to result in a death penalty case that would otherwise not have been death eligible under existing law, the county adjudicating the case would incur indeterminate additional adjudication costs that are likely to be significant.
- For those offenders convicted of life without parole (instead of death), the Department of Rehabilitation and Correction (DRC) may experience a gradual increase in incarceration expenditures over time, as people that may have otherwise been sentenced to terms less than life without parole (LWOP) would now presumably serve longer prison terms (if not sentenced to death).

Detailed Analysis

The bill specifies that the penalty for aggravated murder for an adult offender to be either death or life without parole (LWOP) if the victim is a peace officer, prosecutor, first responder, or military member. In doing so, the bill modifies eligibility for when the death penalty can be sought. In most of these cases, the bill's changes are unlikely to have much of an impact on existing practices. However, if a single case is tried as a death penalty case under the bill and that case would not have otherwise been death penalty eligible under existing law, the bill could result in significant additional costs for the county in which the aggravated murder occurred.

Under continuing law, imposition of the death penalty for aggravated murder is precluded unless the indictment for the offense contains one or more death specifications.[1] One such

[1] R.C. 2929.04.

specification is that the victim was a law enforcement officer,[2] and the offender knew or had reason to believe that the victim was one, or it was the offender's specific purpose to kill a law enforcement officer. The bill modifies that specification by replacing "law enforcement officer" with "peace officer" or "prosecutor" and creates an additional death specification that applies if the victim is a first responder or military member and the offender knew or had reason to believe that the victim was one, or it was the offender's specific purpose to kill a first responder or military member. Please see the LSC bill analysis for a comparison of the eligibility between current law and the bill.

Fiscal effect

While the precise cost to impose the death penalty in Ohio varies from case to case, it is generally recognized that death penalty cases are significantly more expensive to adjudicate than nondeath penalty cases. This is due to a variety of factors including, most notably, that people who face the death penalty tend to be indigent, meaning the county pays the costs of the defense. Additionally, death penalty cases generally require extensive pretrial investigations, see a higher utilization of expert witnesses, require a specialized jury selection process, have lengthier trials, and provide for extensive appeals. For cases in which the death penalty is not sought, the offender could still be facing a significant term in prison (LWOP) which could lead to protracted trials.

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 Ohio 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 typically do not 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.

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, and clemency appeals,[3] as well as legal assistance, criminal investigation and mitigation, and trial services to private appointed attorneys in such cases. According to the Office of the Public Defender, death penalty cases require the appointment of two qualified attorneys, each of which are paid at a rate of $140 per hour, for a

[2] R.C. 2901.01(A)(11).

[3] The law requires the federal court to appoint attorneys to represent the condemned person in federal habeas corpus appeals, so representation by the Office of the Ohio Public Defender is not necessary.

total of $280 per hour total. Only one attorney is required in nondeath penalty cases, and that attorney is paid an hourly rate that is determined by the county. According to the Office of the Public Defender, the average rate paid to court-appointed attorneys in nondeath penalty cases is around $75, which is the state recommended hourly rate. This effectively means that indigent defense in death penalty cases currently cost about $205 more per hour than nondeath penalty cases and will require more resources throughout the extended trial and appeals process.

Department of Rehabilitation and Correction

Incarceration costs

The bill is generally expected to have a minimal impact on the Department of Rehabilitation and Correction (DRC), as aggravated murder currently carries a sentence of life imprisonment with parole eligibility after 20, 25, or 30 years, LWOP, or death, based on the circumstances present.[4] The cost difference between incarcerating a person sentenced to death versus a person sentenced to life imprisonment, including LWOP, ultimately depends on the person's length of stay in prison.

The Office of the Attorney General's 2024 Capital Crimes Annual Report cites the average amount of time spent on death row for a death sentence at just over 22 years.[5] The minimum life sentence in Ohio requires that at least 20 years be served in prison before becoming eligible for parole, meaning that the average time served on death row is currently two years longer than the minimum life sentence. However, the actual time served by an offender for a life sentence, with or without the possibility of parole, or if a death sentence is imposed is likely to vary. This is based on several factors, including the offender's age at the time of sentencing and general health of the offender over time, both of which have generally been recognized to play a role in the number of years a prisoner will ultimately spend in prison after being sentenced to either LWOP or death. Other factors impacting the actual time served for a death sentence include the length of the appeals process, whether all appeals are exhausted, and the state's ability to carry out executions.

According to DRC, the FY 2025 average marginal cost to house an additional offender was $13.47 per day or $4,917 per year. If the bill results in longer prison stays for certain offenders, regardless of the sentence imposed, and the marginal cost remains relatively stable over time, DRC would incur around $4,900 per offender for each additional year of incarceration until that offender's death. Marginal costs, as defined by DRC, are those that increase or decrease directly on a per-person basis with changes in prison population and can be categorized as medical, food service, storeroom/quartermaster (i.e., clothing, mattresses, sheets and blankets, etc.), and mental health services. It should be noted that DRC does not calculate death row or life imprisonment costs separately from the general population and that, unlike some other states, death row inmates in Ohio are generally housed in a medium, rather than maximum, security facility.

[4] R.C. 2929.03.

[5] The average time spent on death row prior to execution has increased by 2.83 years (from 19.20 years in 2020 to 22.03 years in 2024) since Ohio paused executions in 2020. That number is expected to continue to increase until executions resume, thus potentially shortening the gap between time served for a death sentence and LWOP.

Execution costs

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, Ohio has not done so. However, if Ohio were to authorize a different method of execution and the bill resulted in the imposition of death sentences that could otherwise not have been imposed under current law, DRC would incur costs to carry out those death sentences. As previously mentioned, the bill's expansion of the death penalty is limited to aggravated murder when the victim is a first responder, therefore it is unlikely that the bill will result in many additional death penalty cases. The magnitude of costs incurred to carry out a death sentence would depend on the method of execution and DRC policies and procedures.

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