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House Government Oversight Committee, Sponsor Testimony on House Bill 392
April 9th, 2024

Thank you, Chair Peterson, Vice Chair Thomas, Ranking Member Humphrey, and members of the House Government Oversight Committee, for hearing sponsor testimony today regarding HB 392, a bill that, if passed into law, will provide an alternative method to carry out duly imposed executions in the State of Ohio.

Capital punishment has been recognized in Ohio since 1803, it is the law of the land today, and we believe it should continue to be an eligible punishment for those convicted of the most heinous crimes. These sentences are imposed by unanimous juries in our justice system, and so long as capital punishment remains the law, that law must be enforced, and those sentences must be carried out. We would note from the outset that, according to the latest Capital Crimes Report Ohio presently has 120 individuals on Death Row, and of these, 59 were convicted following some form of a confession and/or guilty plea, and 36 were convicted with the use of DNA evidence. Altogether, this means that 80 of Ohio's 120 Death Row inmates – a full 67% – were convicted following a confession and/or the use of DNA evidence.

Since 2018 when Ohio's de facto moratorium on the death penalty began, more than 100 convicted criminals sentenced to capital punishment have been executed nationwide, including 13 federal inmates.

However, during this same period, the executive branch in Ohio has declined to carry out duly imposed capital punishments, citing a claimed lack of access to certain drugs used for lethal injections. Murderers who have had their executions "postponed" since 2018 include people like:

- John Stojetz who, as the head of the Aryan Brotherhood at Madison Correctional Institution, murdered 17-year-old Damico Watkins, a black juvenile inmate.
- Cleveland Jackson who, along with his half-brother, murdered 3-year-old Jala Grant, shooting her twice in the back of the head, and 17-year-old Leneshia Williams, fatally shooting her in the back of the head, after stealing drugs, money, and jewelry in a home in Lima.

- Quisi Bryan who murdered 32-year-old police officer Wayne Leon, shooting him in the face at a gas station in Cleveland in order to prevent Officer Leon from discovering Bryan's parole violation for an attempted robbery conviction.

Despite his decision to delay these executions, Governor Dewine has indicated that the legislature could address this issue by authorizing an alternative method of carrying out capital punishments in addition to lethal injection.

Nitrogen hypoxia is an alternative method for carrying out capital punishments that has been made available by legislatures in other states. In federal court pleadings, even defense counsel have conceded that "Death by nitrogen hypoxia...is completely painless" and that it is their belief that an offender executed by nitrogen hypoxia would "be quickly, painlessly, and humanely rendered unconscious, followed rapidly by death." *In re Ohio Execution Protocol Litigation*, Case No. 2:11-cv-01016-EAS-MRM Doc #:3863 (S.D. Ohio). The legislation introduced by Representative Stewart and I will authorize the State of Ohio to utilize nitrogen hypoxia in addition to lethal injection whenever an inmate elects it, and will direct that nitrogen hypoxia *shall* be used whenever lethal injection is not an available means of carrying out a capital sentence.

In addition, this legislation will restore the confidentiality protections which the Ohio Revised Code previously gave to manufacturers and suppliers of drugs used in lethal injections, extend those protections in the area of nitrogen hypoxia, and make clear that violating the confidentiality surrounding lethal injection and nitrogen hypoxia materials is a 4th degree misdemeanor.

This legislation does nothing to change the manner, or frequency, in which capital punishments are imposed by Ohio juries. However, so long as capital punishment remains the law, existing, duly enacted capital sentences should be carried out to give victims' families the justice and finality they deserve. This bill will provide the legal framework for that to occur, and we are grateful to have the support of the Ohio Prosecuting Attorneys Association and our great Attorney General, Dave Yost.

HB 392 offers a pragmatic solution which will allow Ohio to resume carrying out capital sentences, we respectfully urge that it be favorably reported by this Committee, and we are available to answer any questions the Committee may have.