



# Ohio Prosecuting Attorneys Association

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House Bill 392  
Proponent Testimony  
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Chairman Peterson, Vice-Chair Thomas, Ranking Member Humphrey and members of the House Government Oversight Committee I appreciate the opportunity to testify in support of House Bill 392, a bill to add nitrogen hypoxia as an authorized method of execution in addition to lethal injection and to prohibit the disclosure of certain execution identifying information.

Ohio's most recent execution was in July of 2018, almost six years ago. This unofficial moratorium is purportedly due to an inability to obtain the drugs need for lethal injection. Since 2018, more than a dozen states and the federal government have carried out more than 100 executions, the vast majority by lethal injection. Ohio currently has 30 offenders on death row who have exhausted all of their appeals. Many of them have had execution dates set and then delayed due to the purported inability of the state to obtain lethal injection drugs. The state isn't enforcing the law. This is to the great detriment of the victims of these horrendous crimes, to their friends and loved ones who are forced to deal with all of this undue delay, to the communities where these tragedies occurred and to the public who expects that our laws will be enforced.

House Bill 392 will give those on death row the ability to choose to be executed by either lethal injection or nitrogen hypoxia, unless lethal injection were unavailable. Execution by nitrogen hypoxia is a method that has been adopted by several other states in recent years and is currently under consideration in both Kansas and Nebraska. Notably, defense lawyers have argued in filings in ongoing litigation in federal court over Ohio's death penalty protocol that nitrogen hypoxia should be adopted as an alternative method of execution in Ohio because "The manner and method of causing death...is virtually 100% effective in causing death, virtually 100% effective at causing a pain-free death," and that it is an "available, feasible, and readily implemented alternative as demonstrated by its use by numerous persons who have brought about their own deaths through assisted dying protocols in different jurisdictions."<sup>1</sup>

Secondly, House Bill 392 restores confidentiality provisions for any person that manufactures, compounds, imports, transports, distributes, prescribes, prepares, administers, or otherwise supplies any drugs or combination of drugs for use in the carrying out of a death sentence. This is a policy that Ohio previously had that was enacted in March 2015 but that included a two-year sunset clause. House Bill 392 also would also provide the protection to the manufacturer of any gas and to any

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<sup>1</sup> In re Ohio Execution Protocol Litigation, Case No. 2:11-cv-01016-EAS-MRM Doc #:3863 (S.D. Ohio).

person who participates in the carrying out of a death sentence. This type of confidentiality is a policy that other states that have been able to acquire lethal injection drugs have enacted.

Significantly, national polling on the death penalty consistently shows that support is between 55%-60%.<sup>2</sup> But even this does not reflect the true level of support because most polls ask a generic question about whether the respondent supports the death penalty for murder. But not all murders are death penalty eligible. When people are asked about the specific types of murders that can result in a death sentence – the rape or kidnapping and murder of a young child, committing multiple acts of murder, or committing an act of terrorism in which multiple people are killed – support for the death penalty is even greater, reaching as high as 70% - 80%.<sup>3</sup> In fact, almost all of the death sentences imposed in recent years in Ohio involved multiple murders, the murder of a child, and sometimes both.

It is also important to understand that the pursuit of justice for these types of crimes isn't partisan. The Obama administration understood the need for the death penalty in its pursuit of a death sentence for the terrorist bombing of the Boston Marathon. The Biden administration understood the need for the death penalty in its pursuit of a death sentence for the hate crime murders at the Tree of Life Synagogue in Pittsburgh and now in its pursuit of the death penalty against the gunman in the racially motivated killings at a Buffalo supermarket in May 2022 . These types of crimes are precisely why we have a death penalty and are why it must be enforced.

Ohio prosecutors want the death penalty to be fair, to be accurate, and to guarantee defendants the due process they deserve. Prosecutors want fairness for the victims of these horrific crimes also. This requires creating a path to justice that avoids undue delay in the carrying out of death sentences. Article I. Sec. 10(a)(A)(8) of the Constitution of the State of Ohio provides that victims of crime have the constitutional right to “proceedings free from unreasonable delay and a prompt conclusion of the case.” I don't think anyone can honestly say that we are living up to this standard it comes to the death penalty. The State is failing the victims of some Ohio's most horrific crimes. This is what House Bill 392 is intended to address. This is what justice demands.

I want to thank the bill sponsors Representatives Stewart and Plummer for taking on this difficult issue and the committee for its consideration. We encourage your favorable consideration of the bill. I would be happy to answer any questions.

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<sup>2</sup> <https://news.gallup.com/poll/1606/death-penalty.aspx>

<sup>3</sup> [https://www.realclearpolicy.com/articles/2021/08/16/new\\_evidence\\_confirms\\_widespread\\_support\\_for\\_the\\_death\\_penalty\\_790058.html](https://www.realclearpolicy.com/articles/2021/08/16/new_evidence_confirms_widespread_support_for_the_death_penalty_790058.html)