

As Introduced

135th General Assembly

Regular Session

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H. B. No. 392

Representatives Stewart, Plummer

Cosponsors: Representatives Wiggam, Click, Creech, Bird, Gross, Kick, Lipps,
Williams, Miller, K., King, Barhorst

A BILL

To amend sections 2921.24, 2949.22, 2949.221, and 1
2949.25 of the Revised Code to add nitrogen 2
hypoxia as a method of execution and to prohibit 3
the disclosure of execution identifying 4
information. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2921.24, 2949.22, 2949.221, and 6
2949.25 of the Revised Code be amended to read as follows: 7

Sec. 2921.24. (A) As used in this section: 8

(1) "Correctional employee" and "youth services employee" 9
have the same meanings as in section 149.43 of the Revised Code. 10

(2) "Execution identifying information" has the same 11
meaning as in section 2949.221 of the Revised Code. 12

(3) "Peace officer" has the same meaning as in section 13
2935.01 of the Revised Code. 14

(B) No officer or employee of a law enforcement agency or 15
court, or of the office of the clerk of any court, shall 16

disclose during the pendency of any criminal case the home
address of any peace officer, parole officer, prosecuting
attorney, assistant prosecuting attorney, correctional employee,
or youth services employee who is a witness or arresting officer
in the case.

~~(B)~~ (C) Except as required by division (B)(4) of section
2949.221 or section 2949.222 of the Revised Code, no person
shall recklessly disclose execution identifying information.

(D) Division ~~(A)~~ (B) of this section does not prohibit a
peace officer, parole officer, prosecuting attorney, assistant
prosecuting attorney, correctional employee, or youth services
employee from disclosing the peace officer's, parole officer's,
prosecuting attorney's, assistant prosecuting attorney's,
correctional employee's, or youth services employee's own home
address, and does not apply to any person who discloses the home
address of a peace officer, parole officer, prosecuting
attorney, assistant prosecuting attorney, correctional employee,
or youth services employee pursuant to a court-ordered
disclosure under division ~~(C)~~ (E) of this section.

~~(C)~~ (E) The court in which any criminal case is pending
may order the disclosure of the home address of any peace
officer, parole officer, prosecuting attorney, assistant
prosecuting attorney, correctional employee, or youth services
employee who is a witness or arresting officer in the case, if
the court determines after a written request for the disclosure
that good cause exists for disclosing the home address of the
peace officer, parole officer, prosecuting attorney, assistant
prosecuting attorney, correctional employee, or youth services
employee.

~~(D)~~ (F) Whoever violates ~~division (A)~~ of this section is

guilty of disclosure of confidential information, a misdemeanor 47
of the fourth degree. 48

~~(E) As used in this section:~~ 49

~~(1) "Peace officer" has the same meaning as in section 50
2935.01 of the Revised Code. 51~~

~~(2) "Correctional employee" and "youth services employee" 52
have the same meanings as in section 149.43 of the Revised Code. 53~~

Sec. 2949.22. (A) Except as provided in ~~division (C)~~ 54
divisions (B), (C), and (E) of this section, a death sentence 55
shall be executed by causing the application to the person, upon 56
whom the sentence was imposed, of a lethal injection of a drug 57
or combination of drugs of sufficient dosage to quickly and 58
painlessly cause death. The application of the drug or 59
combination of drugs shall be continued until the person is 60
dead. The warden of the correctional institution in which the 61
sentence is to be executed or another person selected by the 62
director of rehabilitation and correction shall ensure that the 63
death sentence is executed. 64

(B) Except as provided in division (E) of this section, a 65
person upon whom a death sentence was imposed may elect to have 66
the death sentence executed by lethal injection or by nitrogen 67
hypoxia. The choice shall be made in writing and shall be 68
submitted to the director of rehabilitation and correction one 69
week prior to the day designated in division (D) of this 70
section. If a person timely elects nitrogen hypoxia, the death 71
sentence shall be executed by causing the application to the 72
person, upon whom the sentence of death was imposed, of a lethal 73
quantity of nitrogen gas of sufficient dosage to quickly cause 74
death. The application of the nitrogen gas shall be continued 75

until the person is dead. The warden of the correctional 76
institution in which the sentence is to be executed or another 77
person selected by the director of rehabilitation and correction 78
shall ensure that the death sentence is executed. 79

(C) (1) Except as provided in division (C) (2) of this 80
section, if a person does not timely elect nitrogen hypoxia, 81
does not elect either nitrogen hypoxia or lethal injection, or 82
elects lethal injection, the death penalty shall be executed by 83
lethal injection pursuant to division (A) of this section. 84

(2) If, at the time a death sentence is to be executed, 85
the death sentence cannot be executed by lethal injection, the 86
death sentence shall be executed by nitrogen hypoxia, as if the 87
person upon whom the death sentence was imposed had elected 88
nitrogen hypoxia under division (B) of this section. 89

(D) A death sentence shall be executed within the walls of 90
the state correctional institution designated by the director of 91
rehabilitation and correction as the location for executions, 92
within an enclosure to be prepared for that purpose, under the 93
direction of the warden of the institution or, in the warden's 94
absence, a deputy warden, and on the day designated by the judge 95
passing sentence or otherwise designated by a court in the 96
course of any appellate or postconviction proceedings. The 97
enclosure shall exclude public view. 98

~~(C)-(E)~~ (E) If a person is sentenced to death, and if the 99
execution of a death sentence by lethal injection or nitrogen 100
hypoxia has been determined to be unconstitutional by the Ohio 101
supreme court under the Ohio constitution, the death sentence or 102
has been determined to be unconstitutional by the United States 103
supreme court under the United States constitution, or if the 104
United States supreme court declines to review any judgment 105

holding a method of execution to be unconstitutional under the 106
United States constitution made by the Ohio supreme court or the 107
United States court of appeals that has jurisdiction over Ohio, 108
then all persons sentenced to death shall be executed by using 109
any different manner of execution ~~prescribed by law subsequent~~ 110
~~to the effective date of this amendment instead of by causing~~ 111
~~the application to the person of a lethal injection of a drug or~~ 112
~~combination of drugs of sufficient dosage to quickly and~~ 113
~~painlessly cause death, provided that the subsequently~~ 114
~~prescribed different manner of execution~~ has not been determined 115
to be unconstitutional. The use of the ~~subsequently prescribed~~ 116
different manner of execution shall be continued until the 117
person is dead. The warden of the state correctional institution 118
in which the sentence is to be executed or another person 119
selected by the director of rehabilitation and correction shall 120
ensure that the sentence of death is executed. 121

~~(D) No change in the law made by the amendment to this~~ 122
~~section that took effect on October 1, 1993, or by this~~ 123
~~amendment constitutes a declaration by or belief of the general~~ 124
~~assembly that execution of a death sentence by electrocution is~~ 125
~~a cruel and unusual punishment proscribed by~~ (F) No sentence of 126
death shall be reduced as a result of a determination that a 127
method of execution is declared unconstitutional under the Ohio 128
Constitution or the United States Constitution. In any case in 129
which an execution method is declared unconstitutional, the 130
death sentence remains in force until the sentence can be 131
lawfully executed by any valid method of execution. 132

Sec. 2949.221. (A) As used in this section: 133

(1) "Person" has the same meaning as in section 1.59 of 134
the Revised Code. 135

(2) "Licensing authority" means an entity, board, 136
department, commission, association, or agency that issues a 137
license to a person or entity. 138

(3) "Public office" has the same meaning as in section 139
117.01 of the Revised Code. 140

(4) "Execution identifying information" means any record 141
or information that directly or indirectly reveals a name, 142
residential or business address, residential or business 143
telephone number, day and month of birth, social security 144
number, or professional qualifications of: 145

(a) Any person who participates in or administers the 146
execution of a death sentence; 147

(b) Any person that manufactures, compounds, imports, 148
transports, distributes, prescribes, prepares, administers, or 149
otherwise supplies any drugs or combination of drugs, active 150
pharmaceutical ingredients, gas, or other material used in the 151
execution of a death sentence, or any equipment used to 152
administer any drugs or combination of drugs, active 153
pharmaceutical ingredients, gas, or other material to any person 154
during the execution of a death sentence. 155

~~(B) If, at any time prior to the day that is twenty-four~~ 156
~~months after the effective date of this section, a person~~ 157
~~manufactures, compounds, imports, transports, distributes,~~ 158
~~supplies, prescribes, prepares, administers, uses, or tests any~~ 159
~~of the compounding equipment or components, the active~~ 160
~~pharmaceutical ingredients, the drugs or combination of drugs,~~ 161
~~the medical supplies, or the medical equipment used in the~~ 162
~~application of a lethal injection of a drug or combination of~~ 163
~~drugs in the administration of a death sentence by lethal~~ 164

~~injection as provided for in division (A) of section 2949.22 of~~ 165
~~the Revised Code, notwithstanding~~ Notwithstanding any provision 166
of law to the contrary, all of the following apply regarding any 167
information or record in the possession of any public office 168
that ~~identifies or reasonably leads to the identification of the~~ 169
~~person and the person's participation in any activity described~~ 170
~~in this division~~ contains execution identifying information: 171

(1) The information or record shall be classified as 172
confidential, is privileged under law, and is not subject to 173
disclosure by any person, state agency, governmental entity, 174
board, or commission or any political subdivision as a public 175
record under section 149.43 of the Revised Code or otherwise. 176

(2) The information or record shall not be subject to 177
disclosure by or during any judicial proceeding, inquiry, or 178
process, except as described in division (B) (4) of this section 179
or in section 2949.222 of the Revised Code. 180

(3) The information or record shall not be subject to 181
discovery, subpoena, or any other means of legal compulsion for 182
disclosure to any person or entity, except as described in 183
division (B) (4) of this section or in section 2949.222 of the 184
Revised Code. 185

(4) (a) If the information or record pertains to the 186
manufacture, compounding, importing, transportation, 187
distribution, or supplying of any of the items or materials 188
described in division (B) of this section, the person or entity 189
that maintains the information or record shall disclose the 190
information or record to the Ohio ethics commission and the 191
commission may use the information or record, subject to 192
division (B) (1) of this section, only to confirm the following: 193

(i) That the relationship between the person and the 194
department of rehabilitation and correction is consistent with 195
and complies with the ethics laws of this state; 196

(ii) That at the time of the specified conduct, the person 197
has all licenses required under the laws of this state to engage 198
in that conduct and the licenses are valid. 199

(b) If the Ohio ethics commission receives any information 200
or record pursuant to division (B) (4) (a) of this section, the 201
commission shall complete its use of the information or record 202
for the purposes described in that division within fourteen days 203
of its receipt and shall promptly report its findings to the 204
director of rehabilitation and correction. 205

(C) (1) ~~If, at any time prior to the day that is twenty-~~ 206
~~four months after the effective date of this section,~~ an 207
employee or former employee of the department of rehabilitation 208
and correction or any other individual selected or designated by 209
the director of the department participates or participated in 210
the administration of a sentence of death ~~by lethal injection,~~ 211
as provided for in ~~division (A) of~~ section 2949.22 of the 212
Revised Code, subject to division (C) (2) of this section and 213
notwithstanding any other provision of law to the contrary, the 214
protections and limitations specified in divisions (B) (1), (2), 215
and (3) of this section shall apply regarding any information or 216
record in the possession of any public office that identifies or 217
reasonably leads to the identification of the employee, former 218
employee, or other individual and the employee's, former 219
employee's, or individual's participation in the administration 220
of the sentence of death ~~by lethal injection~~ described in this 221
division. 222

(2) Division (C) (1) of this section does not apply with 223

respect to information or a record that identifies or reasonably 224
leads to the identification of the director of rehabilitation 225
and correction or the warden of the state correctional 226
institution in which the administration of the sentence of death 227
takes place. 228

(D) The protections and limitations specified in divisions 229
(B) (1), (2), and (3) of this section regarding information and 230
records that identify or may reasonably lead to the 231
identification of a person described in ~~divisions~~ division (B) 232
or (C) of this section and the person's participation in any 233
activity described in the particular division are rights that 234
shall be recognized as follows: 235

(1) With respect to a person that is an individual, 236
without any requirement for the person to take any action or 237
specifically apply for recognition of such rights; 238

(2) With respect to a person that is not an individual, 239
the rights do not exist unless the person requests to have the 240
rights recognized by applying in writing to the director of 241
rehabilitation and correction. 242

The director of rehabilitation and correction by rule 243
shall establish the procedure according to which a person who is 244
not an individual may apply in writing for the rights described 245
in divisions (B) (1), (2), and (3) of this section. The director 246
shall approve an application that is submitted in compliance 247
with the rules. A person whose application is approved is 248
entitled to the rights for twenty years after the person ceases 249
the qualifying activity as contemplated by the first paragraph 250
of division (B) of this section. The director shall notify any 251
person, who is not an individual and who is entitled to the 252
rights, of the application procedures. 253

(E) If a person or entity that, ~~at any time prior to the~~ 254
~~day that is twenty-four months after the effective date of this~~ 255
~~section,~~ participates in, consults regarding, performs any 256
function with respect to, including any activity described in 257
division (B) of this section, or provides any expert opinion 258
testimony regarding an execution ~~by lethal injection~~ conducted 259
in accordance with ~~division (A) of~~ section 2949.22 of the 260
Revised Code is licensed by a licensing authority, 261
notwithstanding any provision of law to the contrary, the 262
licensing authority shall not do any of the following as a 263
result of that participation, consultation, performance, 264
activity, or testimony by the person or entity: 265

(1) Challenge, reprimand, suspend, or revoke the person's 266
or entity's license; 267

(2) Take any disciplinary action against the person or 268
entity or the person's or entity's licensure. 269

(F) A person may not, without the approval of the director 270
of rehabilitation and correction, knowingly disclose the 271
identity and participation in an activity described in the 272
particular division of any person to whom division (B) of this 273
section applies and that is made confidential, privileged, and 274
not subject to disclosure under that division or of an employee, 275
former employee, or other individual to whom division (C)(1) of 276
this section applies and that is made confidential, privileged, 277
and not subject to disclosure under that division. Any person, 278
employee, former employee, or individual whose identity and 279
participation in a specified activity is disclosed in violation 280
of this division has a civil cause of action against any person 281
who discloses the identity and participation in the activity in 282
violation of this division. In a civil action brought under this 283

division, the plaintiff is entitled to recover from the 284
defendant actual damages, punitive or exemplary damages upon a 285
showing of a willful violation of this division, and reasonable 286
attorney's fees and court costs. 287

~~(G) If division (B), (C), or (D) of this section applies 288~~
~~to a person with respect to any conduct or activity of the 289~~
~~person occurring at a time prior to the day that is twenty-four 290~~
~~months after the effective date of this section, the expiration 291~~
~~of that twenty-four month period does not affect, add to, or 292~~
~~diminish the protections and limitations specified in division 293~~
~~(B) or (C), division (D), and division (E) of this section with 294~~
~~respect to their application to that person. 295~~

Sec. 2949.25. (A) At the execution of a death sentence, 296
only the following persons may be present: 297

(1) The warden of the state correctional institution in 298
which the sentence is executed or a deputy warden, any other 299
person selected by the director of rehabilitation and correction 300
to ensure that the death sentence is executed, any persons 301
necessary to execute the death sentence by lethal injection or 302
nitrogen hypoxia, and the number of correction officers that the 303
warden thinks necessary; 304

(2) The sheriff of the county in which the prisoner was 305
tried and convicted; 306

(3) The director of rehabilitation and correction, or the 307
director's agent; 308

(4) Physicians of the state correctional institution in 309
which the sentence is executed; 310

(5) The clergyperson in attendance upon the prisoner, and 311
not more than three other persons, to be designated by the 312

prisoner, who are not confined in any state institution; 313

(6) Not more than three persons to be designated by the 314
immediate family of the victim; 315

(7) Representatives of the news media as authorized by the 316
director of rehabilitation and correction. 317

(B) The director shall authorize at least one 318
representative of a newspaper, at least one representative of a 319
television station, and at least one representative of a radio 320
station to be present at the execution of the sentence under 321
division (A) (7) of this section. 322

Section 2. That existing sections 2921.24, 2949.22, 323
2949.221, and 2949.25 of the Revised Code are hereby repealed. 324