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Final Analysis
Legislative Service Commission

Am. H.B. 362
124th General Assembly
(As Passed by the General Assembly)

Reps. Trakas, Seaver, Husted, D. Miller, Jerse, Kearns, Damschroder, Perry, Barnes, Latta, Sullivan, Gilb, Schneider, Britton, Hartnett, Ogg, Sferra, Carano, Olman, McGregor, Widowfield, Collier, Schmidt

Sens. Oelslager, Spada

Effective date: *

ACT SUMMARY

- Eliminates electrocution as an option for the execution of a death sentence and requires the use of lethal injection as the means of executing all death sentences.
- Provides a mechanism for determining the manner of execution of a death sentence if lethal injection is determined to be unconstitutional.
- Declares an emergency.

CONTENT AND OPERATION

Former law

Manner of execution of a death sentence

Under prior law, if a person was sentenced to death, the death sentence had to be executed by electrocution (see **COMMENT 1**) unless the person, pursuant to the procedure described below, elected to be executed by lethal injection (see **COMMENT 2**) instead of by electrocution (R.C. 2949.22(A)).

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

Formerly, any person sentenced to death could elect to be executed by lethal injection instead of by electrocution. In order to elect lethal injection, the person sentenced to death was required to file a written notice of the election no later than one week prior to the scheduled date of execution of the person with the Department of Rehabilitation and Correction (DRC). If a person sentenced to death timely filed with DRC a written notice of an election to be executed by lethal injection, the person's death sentence had to be executed by lethal injection. If a person sentenced to death did not timely file with DRC a written notice of election to be executed by lethal injection, the death sentence had to be executed by electrocution. (R.C. 2949.22(B)(1).)

Provisions related to the provisions regarding election of the manner of execution of a death sentence

Prior law specified that: (1) neither a person's timely filing of a written notice of election to be executed by lethal injection under the provisions regarding the election of the manner of execution of a death sentence nor a person's failure to file or timely file such a written notice of election affected or waived any right of appeal or postconviction relief that might have been available under state or federal law relative to the conviction for which the death sentence was imposed upon the person or relative to the imposition or execution of that death sentence (R.C. 2949.22(B)(2)), and (2) if a death sentence was required to be executed by lethal injection because the person sentenced to death elected to be executed by lethal injection under those provisions and if the execution of a death sentence by lethal injection was determined to be unconstitutional, the death sentence had to be executed by electrocution of the person (R.C. 2949.22(D)).

Interpretation of changes in law regarding election of the manner of execution of a death sentence

Prior law, retained and expanded by the act as described below, specified that no change in the law made by the act that enacted the provisions regarding lethal injection as an option for execution of a death sentence (Sub. H.B. 11 of the 120th General Assembly, effective October 1, 1993) constituted a declaration by or belief of the General Assembly that execution of a death sentence by electrocution is a cruel and unusual punishment proscribed by the Ohio Constitution or the United States Constitution (R.C. 2949.22(E)).

Operation of the act

The act eliminates electrocution as an option for the execution of a death sentence and removes from the law all of the existing provisions regarding a person's election of the manner of execution. Therefore, under the act, except as described in the next paragraph, any person who has been sentenced to death must

be executed by lethal injection (see **COMMENT 2**). (R.C. 2949.22(A) and repeal of former R.C. 2949.22(A)(2) and (D).)

The act also provides that, if a person is sentenced to death and if the execution of a death sentence by lethal injection is determined unconstitutional, the death sentence must be executed by using any different manner of execution prescribed by law subsequent to the act's effective date instead of by lethal injection, provided that the subsequently prescribed different manner of execution has not been determined to be unconstitutional. The use of the subsequently prescribed manner of execution must continue until the person is dead, and the warden of the state correctional institution in which the death sentence is executed or another person selected by DRC's Director is required to insure that the sentence of death is executed. (R.C. 2949.22(C).)

The act also specifies that no change in the law made by the act constitutes a declaration by or belief of the General Assembly that execution of a death sentence by electrocution is a cruel and unusual punishment proscribed by the Ohio Constitution or the United States Constitution. This is an expansion of the preexisting provision that pertains to the interpretation of changes in the law made by Sub. H.B. 11 of the 120th General Assembly. (R.C. 2949.22(D).)

Finally, the act removes, from a preexisting provision that identifies the persons who may be present at the execution of a death sentence (see **COMMENT 3**), a reference to executing a person's death sentence by electrocution (R.C. 2949.25(A)(1)).

COMMENT

1. Prior law described "electrocution" as (R.C. 2949.22(A)):

...causing a current of electricity, of sufficient intensity to cause death, to pass through the body of the person upon whom the sentence was imposed. The application of the current shall be continued until the person upon whom the sentence was imposed is dead. The warden of the correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the death sentence is executed.

2. Prior law, retained by the act described "lethal injection" as (R.C. 2949.22(B)(1), relocated by the act to R.C. 2949.22(A)):

... causing the application to the person of a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death instead of by electrocution as described in division (A) of this section. The application of the drug or combination of drugs shall be continued until the person is dead. The warden of the correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the death sentence is executed.

3. Preexisting law, unchanged by the act, requires that a death sentence be executed within the walls of the state correctional institution designated by DRC's Director as the location for executions, within an enclosure to be prepared for that purpose, under the direction of the warden of the institution or, in the warden's absence, a deputy warden, and on the day designated by the judge passing sentence or otherwise designated by a court in the course of any appellate or postconviction proceedings. The enclosure must exclude public view. (Former R.C. 2949.22(C), relocated by the act without substantive change to R.C. 2949.22(B).)

Preexisting law, unchanged by the act except as described below, also provides that, at the execution of a death sentence, only the following persons may be present: (1) the warden of the state correctional institution in which the sentence is executed or a deputy warden, any other person selected by DRC's Director to ensure that the death sentence is executed, any persons necessary to execute the death sentence *by electrocution or lethal injection*, and the number of correction officers that the warden thinks necessary, (2) the sheriff of the county in which the prisoner was tried and convicted, (3) DRC's Director, or the Director's agent, (4) physicians of the state correctional institution in which the sentence is executed, (5) the clergyman in attendance upon the prisoner, and not more than three other persons, designated by the prisoner, who are not confined in any state institution, (6) not more than three persons designated by the immediate family of the victim, and (7) representatives of the news media as authorized by DRC's Director. The Director must authorize at least one representative of a newspaper, at least one representative of a television station, and at least one representative of a radio station to be present at the execution of the sentence. (R.C. 2949.25, unchanged by the act except for the removal of the reference in clause (1) to *electrocution*.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	09-13-01	p. 829
Reported, H. Criminal Justice	10-30-01	pp. 1045-1046
Passed House (81-15)	10-31-01	pp. 1066-1067, 1070-1071
Reported, S. Judiciary on Criminal Justice	11-15-01	p. 1130
Passed Senate (26-3)	11-15-01	pp. 1142-1143

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