Bill Analysis

Michael J. O'Neill *Legislative Service Commission*

H.B. 300

123rd General Assembly
(As Introduced)

Reps. Jones, Opfer, Jerse, D. Miller, Flannery, Barrett

BILL SUMMARY

- Increases the burden of proof required for the imposition of a sentence of death from "proof beyond a reasonable doubt" to "proof beyond any doubt."

- Prohibits the imposition of a sentence of death unless the trier of fact determines by "proof beyond a doubt" that the offender is guilty of aggravated murder, is guilty of at least one statutory aggravating circumstance, and, if the age of the offender is raised, that the offender was 18 or older at the time of the commission of the aggravated murder.

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Overview

Background--imposition of the death penalty under existing aggravated murder sentencing

Under existing law, a court may impose a sentence of death only if the following occur:

(1) The offender pleads guilty to aggravated murder or is convicted of aggravated murder by proof beyond a reasonable doubt.

(2) The offender is charged with at least one specification charging that the offense was committed under certain statutory aggravating circumstances.

(3) The offender pleads guilty to at least one specification of a statutory aggravating circumstance or is convicted by proof beyond a reasonable doubt of at least one specification of a statutory aggravating circumstance.

(4) If the offender raised the issue of age at trial, the offender is found by proof beyond a reasonable doubt to have been over 18 years of age at the time of the commission of the offense.

(5) The three-judge panel, if the offender is tried by a three-judge panel, or the trial jury, if the offender is tried by a jury, finds by proof beyond a reasonable doubt that the aggravating circumstances of which the offender is convicted outweigh any mitigating factors present in the case.

(6) If the offender is tried by a jury, the trial judge also finds by proof beyond a reasonable doubt that the aggravating circumstances of which the offender is convicted outweigh any mitigating factors present in the case.

Operation of the bill

The bill increases the burden of proof for the imposition of a sentence of death from "proof beyond a reasonable doubt" to "proof beyond any doubt." Unless all of the criteria for imposing a sentence of death are proved by proof beyond any doubt, a sentence of death may not be imposed. If all of the criteria are proved by proof beyond a reasonable doubt but not all are proved by proof beyond any doubt, the offender must be sentenced to life without parole, life with parole eligibility after 30 full years, life with parole eligibility after 25 full years, or, if the offender is subject to the Sexually Violent Predator Law, life without parole to be served pursuant to that law. (Secs. 2901.05, 2929.02, 2929.022, 2929.023, 2929.03, 2929.04, and 2929.05.)

Burden of proof in criminal cases

Existing law

Under existing law, every person accused of an offense is presumed innocent until proved guilty by proof beyond a reasonable doubt, and the prosecution has the burden of proof for all elements of the offense. The accused has the burden of going forward with the evidence of an affirmative defense, and the burden of proof, by a preponderance of the evidence, for an affirmative defense. As part of its charge to the jury in a criminal case, the court must read the statutory definitions of "reasonable doubt" and "proof beyond a reasonable doubt."

"Reasonable doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. "Proof beyond a reasonable doubt" is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs. (Sec. 2901.05(A), (C), and (E)(1).)

Operation of the bill

Under the bill, if a person is accused of aggravated murder, death may not be imposed for the offense unless the person is proved guilty of the offense by proof beyond any doubt or pleads guilty to the offense, and the person also is proved guilty by proof beyond any doubt of one or more specifications of a

statutory aggravating circumstance (see **COMMENT** 1). If the person is proved guilty of the offense by proof beyond a reasonable doubt but not by proof beyond any doubt, death is prohibited from being imposed for the offense, but the person is guilty of the offense and must be punished as otherwise provided by law. If the person is proved guilty of the offense by proof beyond any doubt or by proof beyond a reasonable doubt or pleads guilty to the offense and is proved guilty by proof beyond a reasonable doubt of one or more specifications of an aggravating circumstance but is not proved guilty by proof beyond any doubt of any of the specifications, death is prohibited from being imposed for the offense, but the person is guilty of the offense and the specification and must be punished as otherwise provided by law. As part of its charge to the jury in a criminal case, the court must read the statutory definitions of "reasonable doubt," "proof beyond a reasonable doubt," "any doubt," and "proof beyond any doubt."

In relation to a charge of aggravated murder, "any doubt" is present when the jurors, after they have carefully considered and compared all the evidence, cannot say that they have absolutely no doubt, no matter how slight, as to the truth of the charge. The doubt does not have to be a "reasonable doubt." "Proof beyond any doubt" is proof of such character that the jurors do not have any doubt, no matter how slight, that the charge is true. (Sec. 2901.05(B), (C), and (E)(2).)

Aggravated murder

Continuing law

Section 2903.01, not in the bill, prohibits a person from doing any of the following:

(1) Purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy;

(2) Purposely causing the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson or arson, aggravated robbery or robbery, aggravated burglary or burglary, or escape.

(3) Purposely causing the death of another who is under 13 years of age at the time of the commission of the offense.

A person who violates any of these prohibitions is guilty of aggravated murder.

Operation of the bill

The bill does not amend the offense of aggravated murder.

Penalty for aggravated murder

Existing law

General provisions. Under existing law, a person who is convicted of or pleads guilty to aggravated murder must suffer death or be imprisoned for life, except that no person who raises the matter of age and who is not found to have been 18 years of age or older at the time of the commission of the offense is to suffer death. The offender also may be fined an amount fixed by the court, but not more than $25,000. Existing law prohibits the court from imposing a fine or fines for aggravated murder which, in the aggregate and to the extent not suspended by the court, exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death. (Secs. 2929.02(A) and 2929.03(D)(1).)

Penalty when offender not convicted of an aggravating circumstance. If the offender pleads guilty to or is convicted of aggravated murder but is not charged with an aggravating circumstances specification, the offender must be sentenced to life imprisonment with parole eligibility after 20 years. If the offender pleads guilty to or is convicted of aggravated murder, is charged with an aggravating circumstances specification, but does not plead guilty to and is not convicted of any aggravating circumstances specification, the offender must be sentenced to life imprisonment with parole eligibility after 20 years. If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court must impose upon the offender a sentence of life imprisonment without parole that must be served pursuant to the Sexually Violent Predators Laws. (Secs. 2929.022(A)(2)(b)(ii) and 2929.03(A) and (C)(1).)

Penalty when aggravating circumstances exist but death may not be imposed. If the offender pleads guilty to or is convicted of aggravated murder, pleads guilty to or is convicted of an aggravating circumstances specification, but the aggravating circumstances are outweighed by the mitigating factors present in the case, the offender must be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after 30 full years, or life imprisonment with parole eligibility after 25 full years. If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator

specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court must impose upon the offender a sentence of life imprisonment without parole that must be served pursuant to the Sexually Violent Predators Laws. (Sec. 2929.03(C)(2)(a), (D)(2), (D)(3), and (E).)

When death may be imposed. If the offender pleads guilty to or is convicted of aggravated murder, pleads guilty to or is convicted of an aggravating circumstances specification, and the aggravating circumstances outweigh the mitigating factors present in the case, the offender must be sentenced to death (sec. 2929.03(C)(2)(a)).

Operation of the bill

General provisions. The bill prohibits a person from suffering death for committing aggravated murder unless the person is proved guilty of the aggravated murder by proof *beyond any doubt* or pleads guilty to the aggravated murder, and the person also is proved guilty by proof *beyond any doubt* of one or more aggravating circumstances specifications. For purposes of the Aggravated Murder Sentencing Laws, a person's plea of guilty to a charge of aggravated murder has the same effect as if the person had been found guilty by proof beyond any doubt of the aggravated murder and is to be considered to be a finding that the person has been found guilty by proof beyond any doubt of the aggravated murder. A plea of guilty to a charge of aggravated murder has no effect on the findings required under those laws regarding specifications of the aggravating circumstances. Under the bill, if a person raises the matter of age, the person must be found by proof *beyond any doubt* to have been 18 years of age or older at the time of the commission of the offense before the person may suffer death. As under existing law, the offender may be fined an amount fixed by the court, but not more than $25,000. (Secs. 2929.02(A) and 2929.03(E)(1)(c).)

The bill explicitly states that if the offender was convicted of aggravated murder and one or more specifications of an aggravating circumstance, the court or the three-judge panel are prohibited from imposing a sentence of death on the offender, if any of the following applies (sec. 2929.03(D)(1) and (E)(1)):

(1) The offender was found guilty of the aggravated murder by proof beyond a reasonable doubt but was not found guilty of the aggravated murder by proof beyond any doubt and was found guilty, either by proof beyond any doubt or by proof beyond a reasonable doubt, of one or more aggravating circumstances specifications;

(2) The offender was found guilty of the aggravated murder either by proof beyond any doubt or by proof beyond a reasonable doubt and was found guilty by proof beyond a reasonable doubt of one or more aggravating circumstances specifications but was not found guilty by proof beyond any doubt of any of them.

(3) The offender raised the matter of age at trial and was not found by proof beyond any doubt to have been 18 or older at the time of the commission of the offense.

Penalty when offender not convicted of an aggravating circumstance. As under existing law, if the offender pleads guilty to or is convicted of aggravated murder but does not plead guilty to and is not convicted of any aggravating circumstances specification, the offender must be sentenced to life imprisonment with parole eligibility after 20 years. If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court must impose upon the offender a sentence of life imprisonment without parole that must be served pursuant to the Sexually Violent Predators Laws. (Secs. 2929.022(A)(2)(b)(ii) and 2929.03(A) and (C)(1).)

Penalty when aggravating circumstances exist but death may not be imposed. The offender must be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after 30 full years, or life imprisonment with parole eligibility after 25 full years if one of the following applies (sec. 2929.03(C)(2)(a), (D)(2), (D)(3), and (E)):

(1) The offender is convicted of aggravated murder by proof beyond a reasonable doubt but not by proof beyond any doubt and pleads guilty to or is convicted of an aggravating circumstance by proof beyond either a reasonable doubt or proof beyond any doubt.

(2) The offender pleads guilty to aggravated murder or is convicted of aggravated murder by proof beyond any doubt and is convicted of an aggravating circumstance by proof beyond a reasonable doubt but not by proof beyond any doubt;

(3) The offender pleads guilty to aggravated murder or is convicted of aggravated murder by proof beyond any doubt, pleads guilty to an aggravating circumstances specification or is convicted of an aggravating circumstances specification by proof beyond any doubt, but the aggravating circumstances do not outweigh the mitigating factors by proof beyond any doubt.

If the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that are included in the indictment, count in the indictment, or information that charged the aggravated murder, the trial court must impose upon the offender a sentence of life imprisonment without parole that must be served pursuant to the Sexually Violent Predators Laws (sec. 2929.03(C)(2)(a)(ii), (D)(2)(b), (D)(3)(b), and (E)(2)(b)).

A court must impose one of the preceding sentences upon a person who pleads guilty to or is convicted of aggravated murder and an aggravating circumstances specification and who is not found to have been 18 years of age or older at the time of the commission of the offense (sec. 2929.03(D)(1) and (E)(1)(c)).

When death may be imposed. If the offender pleads guilty to or is convicted of aggravated murder by proof beyond any doubt, pleads guilty to or is convicted of an aggravating circumstances specification by proof beyond any doubt, and the aggravating circumstance outweighs the mitigating factors by proof beyond any doubt, the offender must be sentenced to death (sec. 2929.03(C)(2)(a), (D), and (E)).

Issue of the defendant's age

Existing law

A person charged with aggravated murder and one or more specifications of an aggravating circumstance may, at trial, raise the matter of the defendant's age at the time of the alleged commission of the offense and may present evidence at trial that the defendant was not 18 years of age or older at the time of the alleged commission of the offense. The defendant has the burdens of raising the matter of age and of going forward with the evidence relating to the matter of age. After a defendant has raised the matter of age at trial, the prosecution has the burden of proving, by proof beyond a reasonable doubt, that the defendant was 18 years of age or older at the time of the alleged commission of the offense. (Sec. 2929.023.)

Operation of the bill

The bill revises this section to specify that the prosecution has the burden of proving, by proof beyond any doubt, that the defendant was 18 years of age or older at the time of the alleged commission of the offense (sec. 2929.023).

Verdict

Existing law

If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances, the verdict must separately state whether the accused is found guilty or not guilty of the principal charge; if guilty of the principal charge, whether the offender was 18 years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender; and whether the offender is guilty or not guilty of each specification.

The jury must be instructed on its duties in this regard. The instruction to the jury must include an instruction that a specification must be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction must not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification. (Sec. 2929.03(B).)

Operation of the bill

Under the bill, the verdict must separately state all of the following (sec. 2929.03(B)):

(1) Whether the accused is found guilty or not guilty of the principal charge (same as existing law);

(2) If guilty of the principal charge, whether the offender was proved guilty of it beyond any doubt or was proved guilty of it beyond a reasonable doubt (added by the bill);

(3) If guilty of the principal charge, whether *it was proved beyond any doubt* (added by the bill) that the offender was 18 years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender;

(4) Whether the offender is guilty or not guilty of each specification (same as existing law);

(5) For each specification of which the offender is guilty, whether the offender was proved guilty of it beyond any doubt or was proved guilty of it beyond a reasonable doubt (added by the bill).

The instruction to the jury must include an instruction that a specification must be proved *beyond any doubt* (added by the bill) or beyond a reasonable doubt in order to support a guilty verdict on the specification. As under existing law, the

instruction must not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

Trial procedures

Operation of the bill

The bill amends the provisions in the Aggravated Murder Sentencing Laws to specify that all of the prerequisite determinations for a sentence of death for aggravated murder must be made by proof beyond any doubt. Thus all references to determinations of whether it is proved that the offender committed the offense, whether the aggravating circumstances specification are proved, whether the offender was 18 or over at the time of the commission of the offense, and whether the aggravating circumstances outweigh the mitigating factors are amended to reflect the necessity of proof beyond any doubt before a sentence of death may be imposed.

Continuing law--trial by three-judge panel. An offender charged with aggravated murder has a right to be tried by a jury. If the offender waives the right to trial by jury, the offender must be tried by a panel of three judges. The bill does not change this procedure. (Sec. 2929.03(C)(2)(b).)

Existing law

Presentation of aggravating circumstances and mitigating factors. When death may be imposed as a penalty, the court, upon the request of the defendant, must require a pre-sentence investigation to be made and, upon the request of the defendant, must require a mental examination to be made, and must require reports of the investigation and of any mental examination submitted to the court. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this provision is to be disclosed to any person, except as provided in this provision, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination is to be made only upon request of the defendant. Copies of any reports prepared must be furnished to the court, to the trial jury if the offender was tried by a jury, to the prosecutor, and to the offender or the offender's counsel for use under this provision.

The court, and the trial jury if the offender was tried by a jury, must: (1) consider any report prepared and furnished to it and any evidence raised at trial that is relevant to the aggravating circumstances the offender was found guilty of committing or to any factors in mitigation of the imposition of the sentence of death, (2) hear testimony and other evidence that is relevant to the nature and

circumstances of the aggravating circumstances the offender was found guilty of committing, the statutorily specified mitigating factors, and any other factors in mitigation of the imposition of the sentence of death, and (3) hear the statement, if any, of the offender, and any arguments of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender.

The defendant must be given great latitude in the presentation of evidence of the statutorily specified mitigating factors and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

The defendant has the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The prosecution has the burden of proving, by proof beyond a reasonable doubt, that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the factors in mitigation of the imposition of the sentence of death. (Secs. 2929.03(D)(1) and 2929.04(C).)

Weighing the aggravating circumstances against the mitigating factors. Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the pre-sentence investigation and mental examination reports submitted, the trial jury, if the offender was tried by a jury, must determine whether the aggravating circumstances the offender was found guilty of committing are sufficient to outweigh the mitigating factors present in the case. If the trial jury unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the trial jury must recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury must recommend that the offender be sentenced to one of the sentences described in "***Penalty for aggravated murder--Penalty when aggravating circumstances exist but death may not be imposed***," above. If the trial jury recommends one of these sentences, the court must impose the sentence recommended by the jury upon the offender.

The court must consider the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the pre-sentence investigation and mental examination reports submitted to the court. If, after receiving the trial jury's recommendation that the sentence of death be imposed, the court finds, by proof beyond a reasonable doubt, or if the panel of three judges unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh

the mitigating factors, it must impose sentence of death on the offender. Absent such a finding by the court or panel, the court or the panel must impose on the offender one of the sentences described in "***Penalty for aggravated murder--Penalty when aggravating circumstances exist but death may not be imposed***," above. (Secs. 2929.03(D)(2) and (3) and 2929.04(B) and (C).)

Findings of the court and filing the record with the Supreme Court. The court or the panel of three judges, when it imposes sentence of death, must state in a separate opinion its specific findings as to the existence of any of the statutorily specified mitigating factors, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment must state in a separate opinion its specific findings of which of the statutorily specified mitigating factors it found to exist, what other mitigating factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel must file the opinion with the clerk of the Supreme Court within 15 days after the court or panel imposes sentence. The judgment in such a case is not final until the opinion is filed. Whenever the court or a three-judge panel imposes a sentence of death for an offense committed on or after January 1, 1995, the clerk of the court in which the judgment is rendered must deliver the entire record in the case to the Supreme Court. (Sec. 2929.03(F) and (G)(2).)

Election to have the court determine the existence of an aggravating circumstance of a prior conviction. If an indictment or count in an indictment charging a defendant with aggravated murder contains a specification of the aggravating circumstance of a prior conviction (see **COMMENT** 1), the defendant may elect to have the three-judge panel, if the defendant waives trial by jury, or the trial judge, if the defendant is tried by jury, determine the existence of that aggravating circumstance at the sentencing hearing.

If the defendant does not elect to have the existence of the aggravating circumstance determined at the sentencing hearing, the defendant must be tried on the charge of aggravated murder, on the specification of the aggravating circumstance of a prior conviction, and on any other specifications of an aggravating circumstance in a single trial as in any other criminal case in which a person is charged with aggravated murder and specifications.

If the defendant does elect to have the existence of the aggravating circumstance of a prior conviction determined at the sentencing hearing, then, following a verdict of guilty of the charge of aggravated murder, the panel of three judges or the trial judge must:

(1) Hold a sentencing hearing described below, unless (2) applies;

(2) If the offender raises the matter of age and is not found to have been 18 years of age or older at the time of the commission of the offense (and so death may not be imposed), conduct a hearing to determine if the specification of the aggravating circumstance of a prior conviction is proved by proof beyond a reasonable doubt. After conducting the hearing, the panel or judge must impose a sentence as described in "***Penalty for aggravated murder--Penalty when offender not convicted of an aggravating circumstance***" or "***Penalty for aggravated murder--Penalty when aggravating circumstances exist but death may not be imposed***," above. (Sec. 2929.022(A).)

At the sentencing hearing, the panel of judges, if the defendant was tried by a three-judge panel, or the trial judge, if the defendant was tried by jury, must first determine if the specification of the aggravating circumstance of a prior conviction is proved beyond a reasonable doubt. If the panel or the trial judge determines that the specification of the aggravating circumstance of a prior conviction is proved beyond a reasonable doubt or if they do not determine that the specification is proved beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance, the panel of judges or the trial judge and trial jury must impose sentence on the offender as described in "***Penalty for aggravated murder--Penalty when aggravating circumstances exist but death may not be imposed***" or "***Penalty for aggravated murder--When death may be imposed***," above.

If the three-judge panel or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction is proved beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, the panel or the trial judge must terminate the sentencing hearing and impose a sentence described in "***Penalty for aggravated murder--Penalty when offender not convicted of an aggravating circumstance***," above. (Sec. 2929.023.)

Procedure on appeal

Existing law

Whenever sentence of death is imposed, the Supreme Court must review upon appeal the sentence of death at the same time that it reviews the other issues in the case.[1] The Supreme Court must review the judgment in the case and the sentence of death imposed by the court or three-judge panel in the same manner that they review other criminal cases, except that it must review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the Supreme Court must consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. It also must review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the three-judge panel found the offender guilty of committing, and must determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The Supreme Court must affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case. (Sec. 2929.05(A).)

Operation of the bill

Under the bill, the Supreme Court must review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh *beyond any doubt* the mitigating factors in the case. The Supreme Court must affirm a sentence of death only if the Court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh *beyond any doubt* the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case. (Sec. 2929.05(A).)

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[1] *This section also imposes a duty on the court of appeals regarding cases in which a sentence of death was imposed for an offense committed before January 1, 1995. The court of appeals would have no duties in relation to an appeal made under the bill. Consequently, references to the court of appeals have been omitted from the analysis.*

Application

The bill specifies that its provisions apply only in relation to: (1) charges of aggravated murder alleging that the defendant committed the offense on or after the effective date of the bill, (2) charges of aggravated murder alleging that the defendant committed the offense prior to the effective date of the bill but that were not filed against the defendant until on or after the effective date of the bill, and (3) charges of aggravated murder alleging that the defendant committed the offense prior to the effective date of the bill but that, regardless of when the charges were filed, are not tried until on or after the effective date of the bill. The versions of the provisions in effect prior to the effective date of the bill apply in relation to all other charges of aggravated murder. (Section 3.)

COMMENT

1. Aggravating circumstances

Under existing law and the bill, the aggravating circumstances that must be specified in the indictment or count in the indictment and proved beyond a reasonable doubt (existing law) or proved beyond any doubt (the bill) are the following (sec. 2929.04(A)):

(A) The offense was the assassination of the President of the United States or a person in line of succession to the presidency, the Governor or Lieutenant Governor of Ohio, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of Ohio, or a candidate for any of those offices.

(B) The offense was committed for hire.

(C) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(D) The offense was committed while the offender was under detention or while the offender was at large after having broken detention.

(E) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(F) The victim of the offense was a law enforcement officer, as defined in section 2911.01, whom the offender had reasonable cause to know or knew to be a

law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(G) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(H) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding, and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(I) The offender, in the commission of the offense, purposefully caused the death of another who was under 13 years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

2. Mitigating factors

The statutorily specified mitigating factors that the court, trial jury, or three-judge panel must consider, and weigh against the aggravating circumstances are the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors (sec. 2929.04(B)):

(A) Whether the victim of the offense induced or facilitated it;

(B) Whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation;

(C) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(D) The youth of the offender;

(E) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(F) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(G) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-14-99	p. 416

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