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Bill Analysis
Legislative Service Commission

H.B. 492

123rd General Assembly
(As Introduced)

**Reps. Mottley, Thomas, Schuring, Clancy, Winkler, Jacobson, Hartnett,
Pringle, Flannery**

BILL SUMMARY

- Permits the court to impose life imprisonment without parole upon an offender who is convicted of or pleads guilty to aggravated murder, is not charged with a specification of an aggravating circumstance, and is not sentenced to life imprisonment without parole under the Sexually Violent Predator Law.

CONTENT AND OPERATION

Existing law

Aggravated murder--prohibition

R.C. 2903.01 prohibits a person from doing any of the following (R.C. 2903.01(A), (B), (C), and (E)--not in the bill):

(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;

(4) Purposely causing the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies: (a) the victim, at the time of the commission

of the offense, is engaged in the victim's duties, or (b) it is the offender's specific purpose to kill a law enforcement officer.

R.C. 2903.01 also prohibits a person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention from purposely causing the death of another (R.C. 2903.01(D)--not in the bill).

A person who violates any of the above prohibitions is guilty of aggravated murder (R.C. 2903.01(F)--not in the bill).

Aggravated murder--penalties

Under existing law, the penalties available for an offender who is convicted of or pleads guilty to aggravated murder depend on whether the offender is convicted of or pleads guilty to a specification charging the offender with committing the aggravated murder under one or more aggravating circumstances. (See **COMMENT 1** for an overview of the decision making process for imposing a sentence on a person who is convicted of or pleads guilty to aggravated murder. See **COMMENT 2** for a description of the aggravating circumstances.)

Aggravating circumstances. If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances (see **COMMENT 2**) and if the offender is found guilty of both the charge and one or more of the specifications, the court must impose one of the following penalties (R.C. 2929.03(C)(2)(a)):

(1) Except as provided in paragraph (2), below, death, life imprisonment without parole, life imprisonment with parole eligibility after serving 25 full years of imprisonment, or life imprisonment with parole eligibility after serving 30 full years of imprisonment;

(2) Death or life imprisonment without parole that must be served pursuant to the Sexually Violent Predator Law 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.

Existing law prohibits death from being imposed as a penalty for aggravated murder if the offender properly raised the matter of age at trial and was not found at trial to have been 18 years of age or older at the time of the commission of the offense (R.C. 2929.03(D)(1)).

No aggravating circumstance conviction. If the offender is convicted of or pleads guilty to aggravated murder and is either (a) not charged with any specification of an aggravating circumstance or (b) is charged with a specification of an aggravating circumstance but is not convicted of any specification of an aggravating circumstance relative to the aggravated murder (see **COMMENT 2**), the trial court must impose sentence on the offender as follows (R.C. 2929.03(A) and (C)(1)):

(1) Except as provided below in paragraph (2), life imprisonment with parole eligibility after serving 20 years of imprisonment;

(2) Life imprisonment without parole that must be served pursuant to the Sexually Violent Predator Law 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.

Operation of the bill

The bill expands the possible sentences for an offender who is convicted of or pleads guilty to aggravated murder, is not charged with a specification of an aggravating circumstance relative to the aggravated murder to, and is not convicted of and does not plead guilty to a sexual motivation specification and a sexually violent predator specification under the Sexually Violent Predator Law include life imprisonment without parole. The bill does not change the possible sentence for an offender who is charged with a specification of an aggravating circumstance relative to the aggravated murder regardless of whether or not the offender is convicted of or pleads guilty to that specification. (R.C. 2929.03(A).)

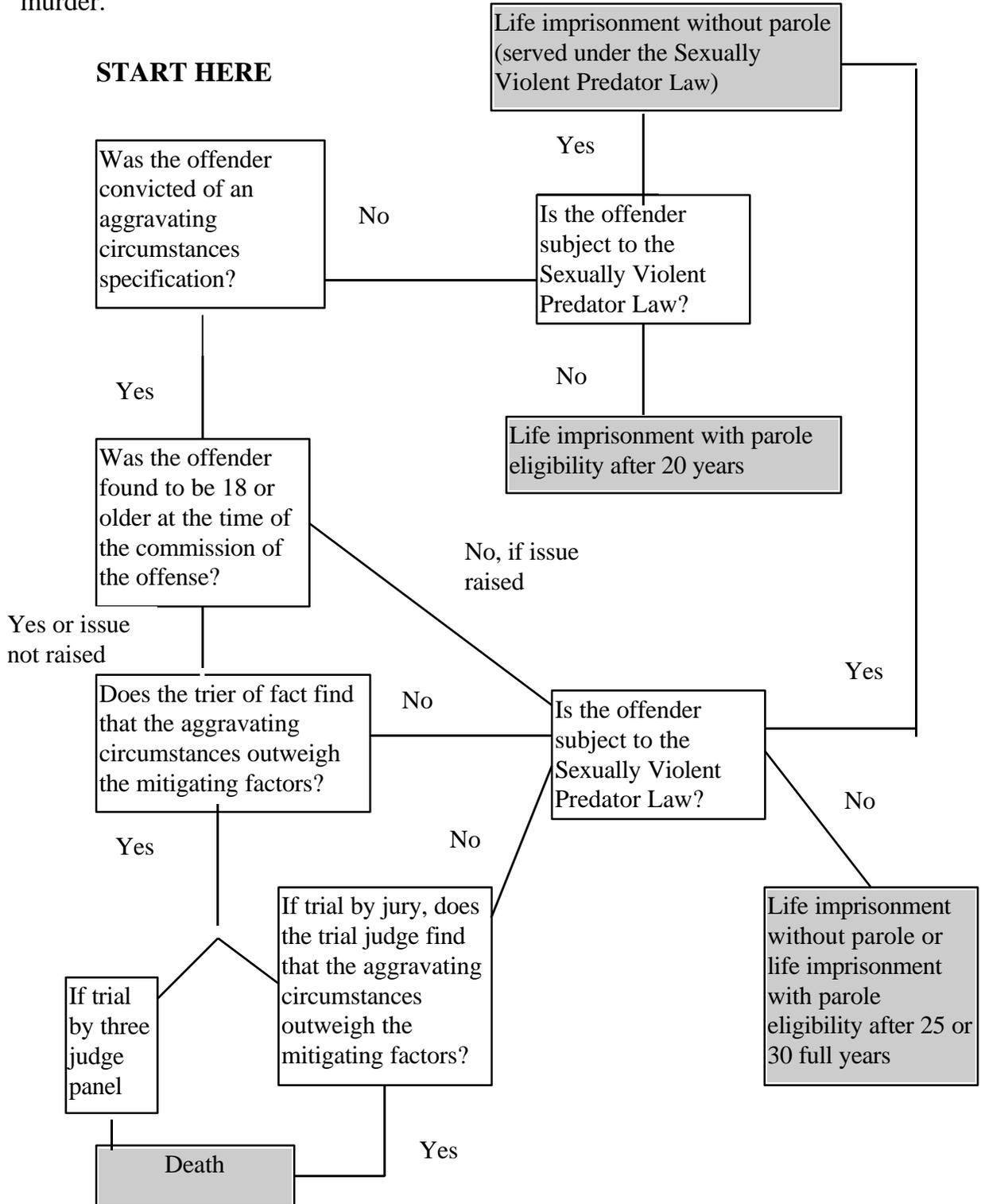
Thus, under the bill, if the offender is convicted of or pleads guilty to aggravated murder but the indictment or count in the indictment does not contain one or more specifications of aggravating circumstances, the trial court must impose sentence on the offender as follows (R.C. 2929.03(A)):

(1) Except as provided below in paragraph (2), *life imprisonment without parole* or life imprisonment with parole eligibility after serving 20 years of imprisonment;

(2) Life imprisonment without parole that must be served pursuant to the Sexually Violent Predator Law 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.

COMMENT

1. The following flowchart shows the decision-making process for imposing a sentence on a person who pleads guilty to or is convicted of aggravated murder.



2. Section 2929.04(A), not in the bill, provides that imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment and proved beyond a reasonable doubt:

(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 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.

3. If one or more aggravating circumstances are proved beyond a reasonable doubt, the court, trial jury, or three-judge panel must consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, 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 H0492-I.123/rss	11-01-99	p. 1327