



## **H.B. 102**

124th General Assembly  
(As Introduced)

**Reps. Jones, Beatty, D. Miller, Ford, Patton, Allen, S. Smith, Redfern, Britton, Barnes, Barrett**

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### **BILL SUMMARY**

- Authorizes the submission of evidence that the death penalty has been imposed in a demographically disparate manner locally, statewide, or nationwide during the determination of the appropriate penalty for an offender who pleads guilty to or is convicted of aggravated murder and an aggravating circumstances specification.
- Requires a court or a three-judge panel, whenever it imposes a sentence of death on an offender, to provide the Attorney General's office with demographic information pertaining to the offender and the victims of the crime for which the offender received the sentence.
- Requires the Attorney General to include in each annual capital case status report demographic information about the offender sentenced to death and the victims of the crime for which the offender was sentenced to death, including their race, gender, age, and income classification.

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### **CONTENT AND OPERATION**

#### **Procedure upon a plea of guilty to or a conviction of aggravated murder and an aggravating circumstances specification**

##### **Operation of the bill**

The bill revises a provision in existing law that describes what the court and the jury must hear when considering the appropriate penalty to recommend or impose on an offender who pleads guilty to or is convicted of aggravated murder and an aggravating circumstances specification (see **COMMENT** 1, 2, and 3). The bill specifies that the court, and the trial jury if the offender was tried by a jury, must hear (in addition to other specified items) the statement, if any, of the

offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender (existing law) *including, but not limited to, evidence that the death penalty has been imposed in a demographically disparate manner locally, statewide, or nationwide* (added by the bill). (R.C. 2929.03(D)(1).)

### **Existing law**

A person charged with aggravated murder may also be charged with a specification charging that the offense was committed under certain aggravating circumstances. If the offender also pleads guilty to or is convicted of this specification, the offender is subject to the death penalty or various types of life imprisonment. (R.C. 2929.03.)

When an offender pleads guilty to or is convicted of aggravated murder and an aggravating circumstances specification, the court, and the trial jury if the offender is tried by a jury, must do all of the following (R.C. 2929.03(D)(1)):

(1) Consider any pre-sentence investigation and mental examination 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 (see **COMMENT 4**);

(3) Hear the statement, if any, of the offender, and the arguments, if any, of counsel for the defense and prosecution, that are relevant to the penalty that should be imposed on the offender (the bill adds the requirement that they hear evidence of the demographically disparate imposition of the death penalty--see above).

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. (R.C. 2929.03(D)(1).)

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 report and the mental examination reports submitted to the court, 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. If the trial jury recommends that the sentence of death be imposed upon the offender, the court also must determine, by proof beyond a reasonable doubt, whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors. If the court finds that they do, it must impose a sentence of death on the offender.

If the offender was tried by a three-judge panel, the panel must determine, by proof beyond a reasonable doubt, whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors. If the panel unanimously finds that they do, it must impose a sentence of death on the offender. (R.C. 2929.03(D)(2).)

If the trial jury or three-judge panel does not find by proof beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors or if the trial judge, after the jury has recommended the death penalty, does not find by proof beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors, the panel of three judges or the court must impose one of the following sentences on the offender (R.C. 2929.03(D)(2)):

(1) 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, life imprisonment without parole that must be served under the Sexually Violent Predator Laws;

(2) Life imprisonment without parole;

(3) Life imprisonment with parole eligibility after serving 25 full years of imprisonment;

(4) Life imprisonment with parole eligibility after serving 30 full years of imprisonment.

## Attorney General's annual capital case status report

### Operation of the bill

Under the bill, whenever a court or a panel of three judges imposes a sentence of death on an offender, the court or panel must provide the Attorney General's office with demographic information pertaining to the offender and the victims of the crime for which the offender received that sentence. The bill also requires the Attorney General to include in each annual capital case status report demographic information about the offender and the victims of the crime for which the offender was sentenced to death, including their race, gender, age, and income classification.

In uncodified law, the bill requires the Attorney General, for each offender listed on any annual capital case status report required to be kept by the Attorney General before the bill's effective date, to include in each future annual capital case status report the demographic information required by the bill. The Attorney General is to obtain this information from the record of relevant court cases or from other means to the extent it is available and may be found with reasonable diligence and research. (R.C. 109.97(C)(1)(d) and 2929.03(H); Section 3.)

### Existing law

Annually, the Attorney General must prepare or cause to be prepared a capital case status report that pertains to all individuals who were sentenced to death for an aggravated murder committed on or after October 19, 1981, and that contains for each of those individuals specified information. The Attorney General must file a copy of each annual capital case status report with the Governor, the Chief Justice of the Supreme Court, the President of the Senate, and the Speaker of the House of Representatives no later than the first day of April of the calendar year following the calendar year covered by the report. Each annual capital case status report is to be a public record subject to inspection and copying in accordance with the Public Records Laws. (R.C. 109.97(B).)

An annual capital case status report must contain all of the following information that pertains as of the 31st day of December of the calendar year covered by the report to each individual who was sentenced to death for an aggravated murder committed on or after October 19, 1981 (R.C. 109.97(C)(1)):

- (1) A citation to and brief summary of the facts of each case in which the individual was sentenced to death;
- (2) A statement as to the individual's present legal status;

(3) A summary history of the individual's legal actions to vacate, reverse, or otherwise be relieved from the sentence of death, including, but not limited to, motions to vacate the sentence of death, appeals, petitions for postconviction relief, and petitions for habeas corpus relief filed with an Ohio court or a court of the United States;

(4) Any other information that the Attorney General determines is relevant, including, but not limited to, a tentatively scheduled date for the execution of the individual's sentence of death.

In each annual capital case status report, the Attorney General must set forth or cause to be set forth the preceding information in the form that the Attorney General considers most appropriate to present that information, including, but not limited to, charts, tables, graphs, and narrative summaries. (R.C. 109.97(C).)

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## COMMENT

1. R.C. 2903.01 (aggravated murder), not in the bill, prohibits a person from doing any of the following:

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

(B) 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;

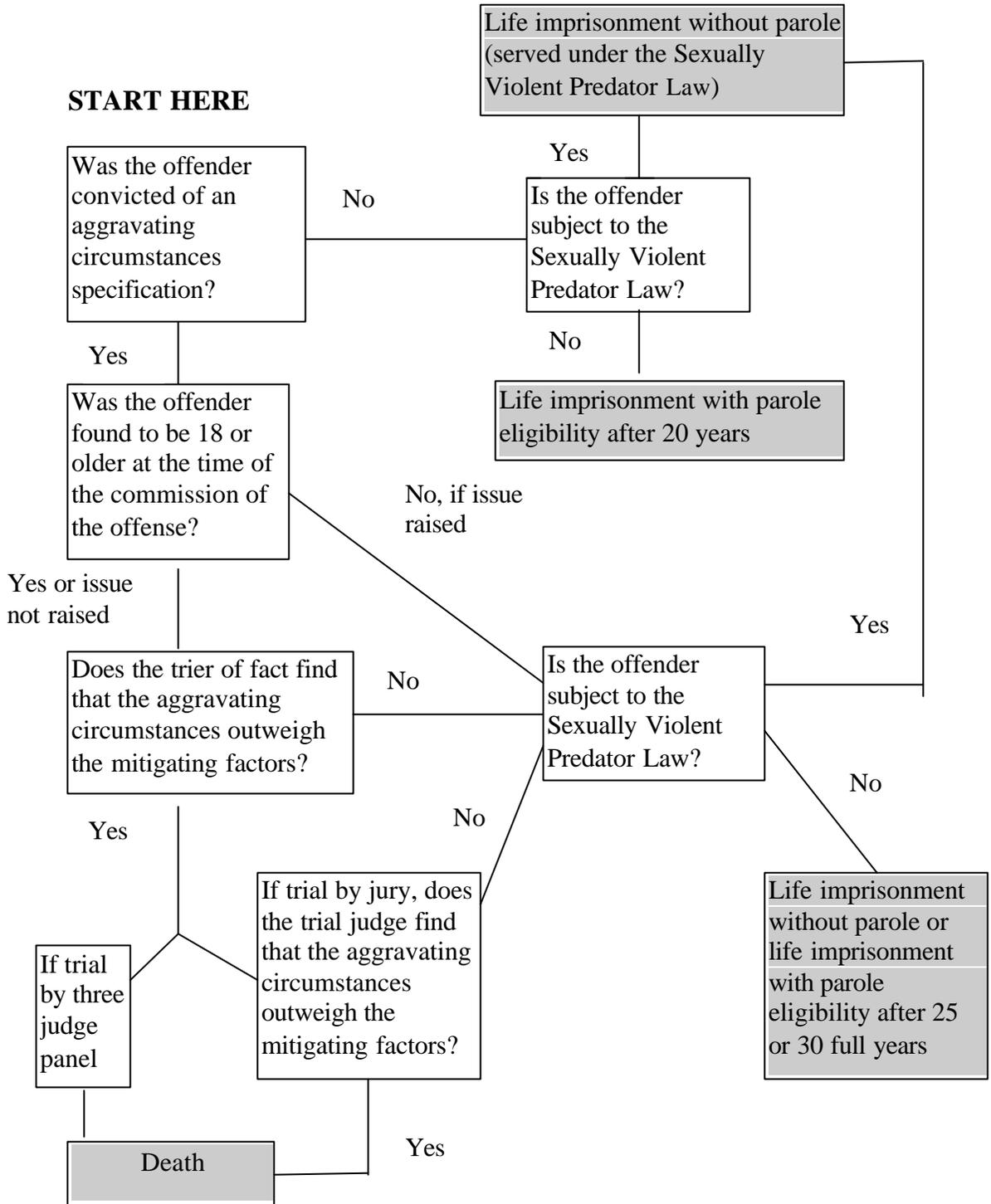
(C) Purposely causing the death of another who is under 13 years of age at the time of the commission of the offense;

(D) Purposely causing the death of another while under detention as a result of having been found guilty of or having pleaded guilty to a felony or after breaking detention;

(E) Purposely causing the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer if the victim, at the time of the offense, is engaged in the victim's duties or it is the offender's specific purpose to kill a law enforcement officer.

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

2. 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.



3. R.C. 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, defined in R.C. 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.

4. 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 (R.C. 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.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	02-15-01	p. 166

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