



H.B. 346

124th General Assembly
(As Introduced)

Reps. R. Miller, Key, Hartnett, Sykes, Allen, Seaver, Krupinski, Flannery, Carano, Barrett, Strahorn, D. Miller, Latell

BILL SUMMARY

- Prohibits the imposition of a death sentence upon an offender who is convicted of aggravated murder and one or more aggravating circumstances specifications and is determined to be a mentally retarded person.
- Provides a specific procedure to be followed to determine whether the offender is a mentally retarded person.

CONTENT AND OPERATION

Prohibition against imposing a death sentence upon a defendant who has been determined to be a mentally retarded person

Prohibition

Under the bill, if a person is convicted of aggravated murder and one or more specifications of an aggravating circumstance (see **COMMENT** 1, 2, and 3), death may not be imposed upon the defendant if it is determined that the defendant is a mentally retarded person. Instead, the defendant must be sentenced to one of the following: (1) life imprisonment without parole, (2) life imprisonment with parole eligibility after serving 25 full years of imprisonment, (3) life imprisonment with parole eligibility after serving 30 full years of imprisonment, or (4) if the defendant is also 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 served pursuant to the Sexually Violent Predator Law. (R.C. 2929.041(B) and 2929.04(D)(3)(a) and (b).)

Notice requirement

The bill mandates that a defendant who is charged with aggravated murder and one or more specifications of an aggravating circumstance and who intends to raise the issue that the defendant is a mentally retarded person as a bar to a sentence of death give notice of that intention prior to the beginning of the sentencing hearing for the aggravated murder. The defendant must give the written notice to the court and to the prosecuting attorney in the case. (R.C. 2929.041(C).)

Motion requesting determination

If the defendant has given the above mentioned notice to the court and to the prosecuting attorney, the defendant may file a motion requesting that the trial judge or the three-judge panel that tried the defendant, whichever is applicable, determine whether the defendant is a mentally retarded person when either of the following events occur (R.C. 2929.041(D)): (1) if the defendant was tried by a jury, the trial jury recommends to the trial judge that the sentence of death be imposed, or (2) if the defendant was tried by a three-judge panel, the panel unanimously finds by proof beyond a reasonable doubt that the aggravating circumstances the defendant was found guilty of committing outweigh the mitigating factors in the case. A defendant must file a motion requesting the trial judge or the three-judge panel to determine whether the defendant is a mentally retarded person after the occurrence of the applicable event described in (1) or (2) above and prior to the completion of the sentencing hearing. (R.C. 2929.041(D) and (E).)

Determination by judge or panel

Upon the filing of the motion, the trial judge or the three-judge panel must appoint two examiners to conduct mental retardation evaluations of the defendant and must stay further proceedings in the sentencing hearing. Upon completion of their evaluations, the examiners immediately must report their findings to the trial judge or the three-judge panel, the prosecuting attorney, and the defendant. Upon receipt of the reports of the findings and not before receipt of them, the trial judge or the three-judge panel must proceed with the sentencing hearing. The findings of the examiners are not binding upon the trial judge or three-judge panel, but the judge or panel must consider the findings.

The trial judge or the three-judge panel must consider the findings of the court-appointed examiners, and the findings of any other expert in the field of mental retardation that are offered by the prosecuting attorney or the defendant, on the issue of whether the defendant is a mentally retarded person. If the trial judge or the three-judge panel finds by clear and convincing evidence that the defendant

is a mentally retarded person, the judge or panel must enter that finding and must not impose a sentence of death on the defendant. The trial judge or the three-judge panel must impose upon the defendant one of the life sentences described above under "**Prohibition.**" If the judge or panel does not find by clear and convincing evidence that the defendant is a mentally retarded person, the judge or panel must enter a finding that the defendant is not a mentally retarded person and shall impose a sentence of death. (R.C. 2929.041(E) and 2929.03(D)(3)(a) and (b).)

Appeal finding by judge or panel

The prosecuting attorney may appeal as a matter of right any finding made by a trial judge or three-judge panel that a defendant in a death sentence case is a mentally retarded person. If the judge or three-judge panel finds that the defendant is not a mentally retarded person and if the defendant is sentenced to death, that finding must be considered on appeal. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the Supreme Court must determine whether the trial court or panel correctly found that the defendant was not a mentally retarded person. The sentence of death must be affirmed if the court of appeals or Supreme Court determines that the trial court or panel correctly found that the defendant was not a mentally retarded person. (R.C. 2929.041(F), 2929.05(A) and 2945.67(A).)

Application of bill

The bill applies to an aggravated murder committed on or after the effective date of the bill, and to an aggravated murder committed prior to the effective date of the bill if the person charged with the offense is or has been convicted of the aggravated murder and one or more specifications of an aggravating circumstance and, prior to the effective date of this bill, the person has not been sentenced for the offense and the specification.

The bill does not apply to any aggravated murder committed prior to the effective date of the bill if the person charged with the offense has been convicted of the aggravated murder and one or more specifications of an aggravating circumstance, and, prior to the effective date of this bill, the person has been sentenced to death for the aggravated murder and the specification. (R.C. 2929.041(H).)

MRDD rules

The bill requires the Department of Mental Retardation and Development Disabilities (MRDD) to adopt rules to specify the standardized intelligence test to be used under the bill to determine if a person is a mentally retarded person (R.C. 2929.041(G)).

Definitions

The bill defines the following terms for use within the bill's new provisions discussed above (R.C. 2929.041(A)):

"Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.

"Examiner" means a psychologist designated by the Director of MRDD to conduct a mental retardation evaluation of a defendant under the bill.

"Mentally retarded person" means an individual having significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior and that is manifested during the period from conception to 18 years of age.

"Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of MRDD adopted under the bill.

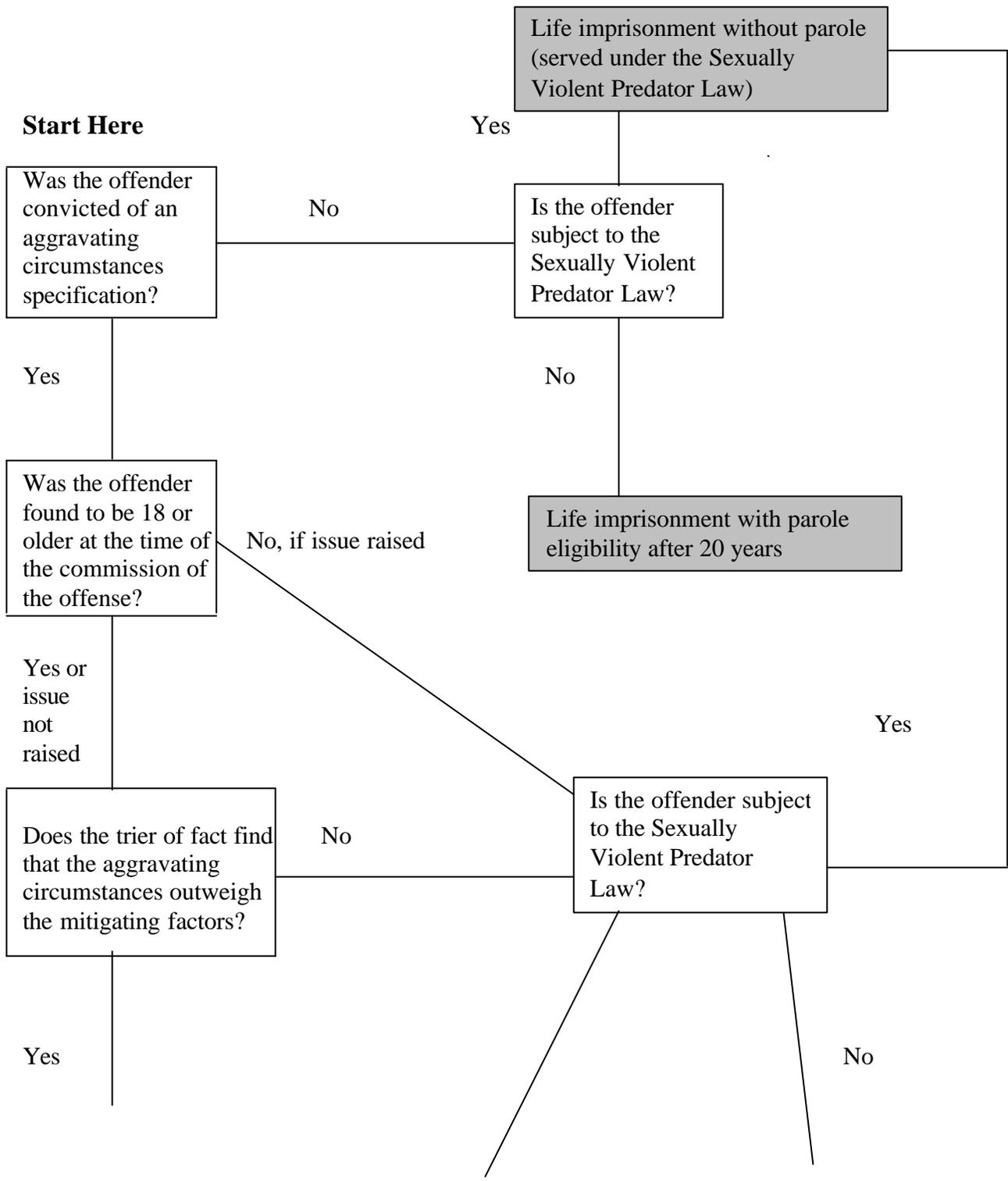
Decision-making process for imposing a sentence on a person who pleads guilty to or is convicted of aggravated murder

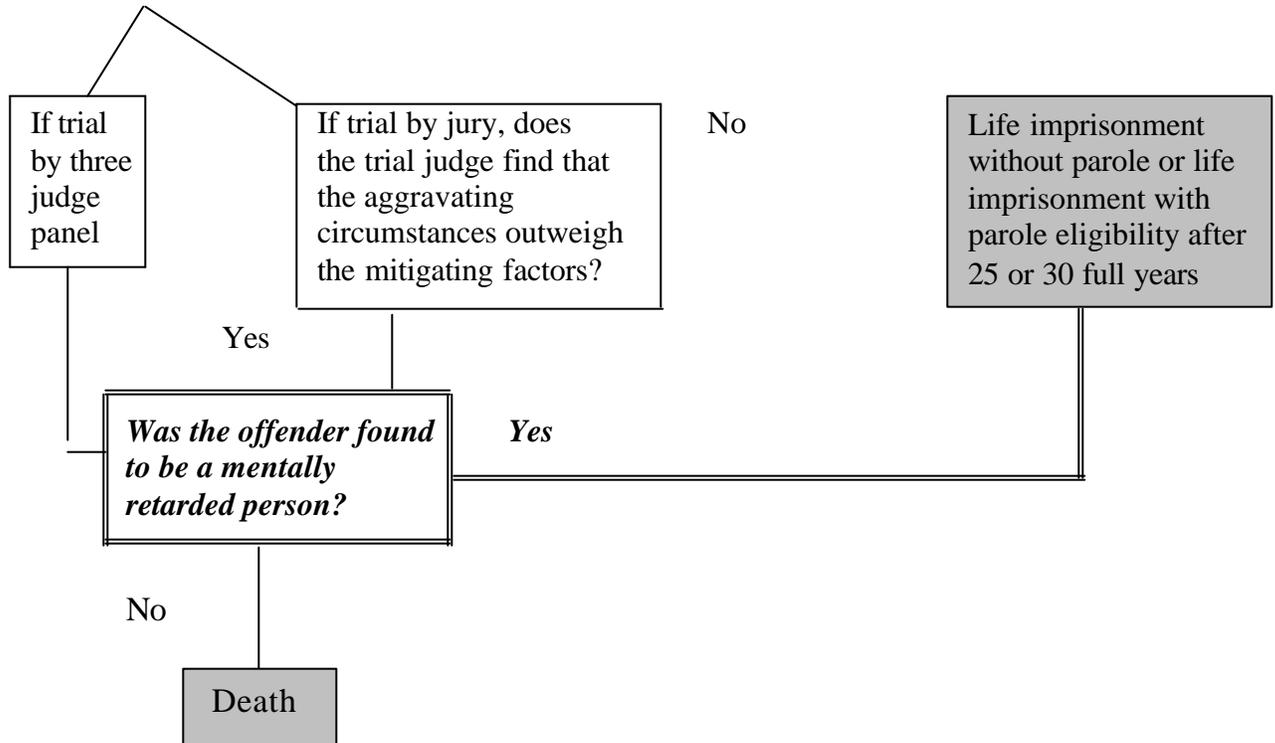
Under the bill, upon consideration of the evidence, testimony, statements, arguments, and reports of presentence and mental examinations, if, after receiving the jury's recommendation that the sentence of death be imposed, the court finds or three-judge panel unanimously finds, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, and if in either situation the offender filed a petition raising the issue that the offender is a mentally retarded person, the court must make a determination upon the petition. If the offender is determined to be a mentally retarded person, the court is prohibited from imposing a sentence of death and must impose one of the life sentences described above. If the offender is not determined to be a mentally retarded person, the court must impose a sentence of death. (R.C. 2929.03(D)(4).)

If the court or panel imposes life imprisonment because the offender is a mentally retarded person, it must state that fact in a separate opinion (R.C. 2929.03(F)).

The following flow chart shows the decision-making process, found in R.C. 2929.03 (existing law), for imposing a sentence upon a person who pleads guilty to or is convicted of aggravated murder. (The new part of the decision-making

process added by the bill appears in the flow chart in a double-lined box and in italics.)





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 when 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. R.C. 2929.04, 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 the 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, 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.

(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 of the aggravating circumstances are proved beyond a reasonable doubt, the court, trial jury, or panel of three judges 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:

(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	08-28-01	p. 821

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