



## **Sub. H.B. 184**

125th General Assembly  
(As Passed by the General Assembly)

**Reps. Schmidt, McGregor, Aslanides, Schaffer, Schneider, Raussen, Gilb, Collier, Willamowski, Latta, D. Evans, Callender, Carmichael, Cates, Chandler, Clancy, Daniels, Domenick, C. Evans, Flowers, Grendell, Hartnett, Hoops, Hughes, Jerse, Jolivette, Martin, Niehaus, Otterman, T. Patton, Raga, Reidelbach, Schlichter, Seaver, Seitz, Sferra, G. Smith, J. Stewart, Taylor, Wagner, Webster, Widener, Widowfield**

**Sens. Goodman, Austria, Hottinger, Jacobson, Robert Gardner, Mumper, White**

**Effective date: March 23, 2005**

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### **ACT SUMMARY**

- In addition to the existing sentence of life imprisonment with parole eligibility after serving 20 years of imprisonment, permits the court to impose a sentence of 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 upon an offender who is convicted of or pleads guilty to aggravated murder and who either is not charged with or is charged with but is not convicted of and does not plead guilty to a specification of an aggravating circumstance.
- Clarifies and revises the procedures that govern the resentencing of a person sentenced to death whose sentence is vacated; clarifies that those procedures, and the procedures that apply regarding the resentencing of a person whose sentence of life imprisonment without parole is vacated, also apply when a sentence of death or a sentence of life imprisonment without parole is set aside or nullified; specifies that those procedures also apply when a sentence of death is vacated because a court has determined that the offender is mentally retarded under standards established by the Ohio Supreme Court or the U.S. Supreme Court; and specifies that the procedures as clarified and revised apply to all

offenders sentenced to death for an aggravated murder committed on or after October 19, 1981, or for terrorism committed on or after May 15, 2002, and apply equally to all such offenders sentenced to death prior to, on, or after the act's effective date, including those who, on that date, are challenging their sentence of death and those whose sentence of death has been set aside, nullified, or vacated by a court but who, as of that date, have not yet been resentenced.

- Includes a severability clause.

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## CONTENT AND OPERATION

### *Imposition of sentence for aggravated murder*

#### *Overview*

Under continuing law, a person who is convicted of or pleads guilty to aggravated murder is potentially subject to a sentence of death if the offender also is convicted of or pleads guilty to a specification charging the offender with an aggravating circumstance. If the offender is convicted of or pleads guilty to an aggravating circumstance but a sentence of death is not imposed because the aggravating circumstances of which the offender was convicted do not outweigh the mitigating circumstances in the case or because of the age of the offender (i.e., the offender raises the issue of age and is found at trial to have been under 18 years of age at the time of the offense), the offender may 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. Under prior law, if the person is not charged with an aggravating circumstance specification or is charged with such a specification but does not plead guilty to and is not

convicted of the specification, the offender must be sentenced to life imprisonment with parole eligibility after 20 years. Special provisions apply if the offender does not receive a sentence of death and is convicted of or pleads guilty to both a sexual motivation specification and a sexually violent predator specification.

The act expands the possible sentences for an offender who is convicted of aggravated murder but is not convicted of an aggravating circumstance by adding possible sentences that parallel the possible sentences of an offender who is convicted of aggravated murder and an aggravating circumstance specification when a sentence of death is not imposed. (R.C. 2929.03.)

**When indictment does not include specifications of aggravating circumstances**

Under prior law, if the indictment or count in the indictment charging aggravated murder did not contain one or more specifications of aggravating circumstances and the offender was not convicted of and did not plead guilty to a sexual motivation specification and a sexually violent predator specification, then, following a verdict of guilty of the charge of aggravated murder, the trial court had to impose a sentence of life imprisonment with parole eligibility after serving 20 years of imprisonment. Under continuing 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, the trial court must impose upon the offender a sentence of life imprisonment without parole. (R.C. 2929.03(A).)

**Operation of the act.** Under the act, when an offender is convicted of or pleads guilty to aggravated murder and is not charged with an aggravating circumstance, the court must impose one of the following sentences (R.C. 2929.03(A)(1) and (2)):

- (1) Life imprisonment without parole (added by the act);
- (2) Life imprisonment with parole eligibility after serving 20 years of imprisonment (only available sentence under prior law);
- (3) Life imprisonment with parole eligibility after serving 25 full years of imprisonment (added by the act);
- (4) Life imprisonment with parole eligibility after serving 30 full years of imprisonment (added by the act);

(5) If the offender also is convicted of or pleads guilty to a sexual motivation and a sexually violent predator specification, life imprisonment without parole (continuing law).

**Offender found not guilty of specifications of aggravating circumstances**

Under prior law, if the indictment or count in the indictment charging aggravated murder contained one or more specifications of aggravating circumstances and the offender was not convicted of and did not plead guilty to both a sexual motivation and a sexually violent predator specification, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age, the trial court had to impose a sentence of life imprisonment with parole eligibility after serving 20 years of imprisonment on the offender. Under continuing 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, the trial court must impose upon the offender a sentence of life imprisonment without parole. (R.C. 2929.03(C).)

**Operation of the act.** Under the act, when an offender is convicted of or pleads guilty to aggravated murder and charged with, but is not convicted of and does not plead guilty to, an aggravating circumstance, the court must impose one of the following sentences (R.C. 2929.03(C)(1)):

- (1) Life imprisonment without parole (added by the act);
- (2) Life imprisonment with parole eligibility after serving 20 years of imprisonment (only available sentence under prior law);
- (3) Life imprisonment with parole eligibility after serving 25 full years of imprisonment (added by the act);
- (4) Life imprisonment with parole eligibility after serving 30 full years of imprisonment (added by the act);
- (5) If the offender also is convicted of or pleads guilty to both a sexual motivation and a sexually violent predator specification, life imprisonment without parole (continuing law).

**Resentencing, after vacating, etc., of death sentence or sentence of life without parole**

**Prior law**

**Resentencing after sentence of death is vacated.** Both the prior version of R.C. 2929.06(A) and (B) and the version contained in the act set forth procedures that govern the resentencing of an offender who is sentenced to death when the sentence of death is vacated. The prior version provided:

(1) If the sentence of death imposed upon the offender was vacated upon appeal because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the Supreme Court, in cases in which the Supreme Court reviewed the sentence upon appeal, could not affirm the sentence of death under the standards imposed by R.C. 2929.05 (see **COMMENT 1**), was vacated upon appeal for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in R.C. 2929.03 and 2929.04 (see "**Overview**," above) was unconstitutional, or was vacated pursuant to division (C) of R.C. 2929.05 (see **COMMENT 1**), the trial court that sentenced the offender had to conduct a hearing to resentence the offender. At the resentencing hearing, the court had to impose one of the following sentences upon the offender: (a) except as provided in clause (b) of this sentence, 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, or (b) if the sentence of death was imposed for an aggravated murder committed on or after January 1, 1997, and if the offender also was convicted of or pleaded guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that must be served pursuant to R.C. 2971.03 (R.C. 2971.03 is a provision that pertains to sentences imposed upon sexually violent predators under the Sexually Violent Predator Law).

(2) If the sentence of death imposed upon the offender was vacated upon appeal because of error that occurred in the sentencing phase of the trial and if the provisions described in (1), above, did not apply, the trial court that sentenced the offender had to conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court had to impanel a new jury for the hearing; if the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges had to conduct the hearing. At the hearing, the court had to follow the procedure set forth in division (D) of R.C. 2929.03 (see **COMMENT 2**) in determining whether to impose upon the offender a sentence of 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 (see COMMENT 3).

**Resentencing after sentence of life without parole was vacated.** Prior law provided that, if a sentence of life imprisonment without parole was imposed upon an offender pursuant to R.C. 2929.021 or 2929.03 and the sentence so imposed was vacated upon appeal for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in R.C. 2929.03 and 2929.04 was unconstitutional, the trial court that sentenced the offender had to conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving 25 full years of imprisonment or to life imprisonment with parole eligibility after serving 30 full years of imprisonment (R.C. 2929.06(C)).

### **Operation of the act**

The act clarifies and revises the procedures that govern the resentencing of a person sentenced to death whose sentence is vacated; clarifies that those procedures, and the procedures that apply regarding the resentencing of a person whose sentence of life imprisonment without parole is vacated, also apply when a sentence of death or a sentence of life imprisonment without parole is set aside or nullified; specifies that those procedures also apply when a sentence of death is vacated because a court has determined that the offender is mentally retarded under Supreme Court-established standards; and specifies that the procedures as clarified and revised apply to all offenders sentenced to death for an aggravated murder committed on or after October 19, 1981, or for terrorism committed on or after May 15, 2002, and apply equally to all such offenders sentenced to death prior to, on, or after the act's effective date, including those who, on that date, are challenging their sentence of death and those whose sentence of death has been set aside, nullified, or vacated by a court but who, as of that date, have not yet been resentenced.

**Resentencing after sentence of death is vacated.** Under the act (R.C. 2929.06(A) and (B)):

(1) If an offender is sentenced to death and the sentence of death imposed upon the offender is *set aside, nullified, or vacated* because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the Supreme Court, in cases in which the Supreme Court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by R.C. 2929.05, is *set aside, nullified, or vacated* for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in R.C. 2929.03 and 2929.04 is unconstitutional, is *set aside, nullified, or vacated* pursuant to R.C. 2929.05(C), or is *set aside, nullified, or vacated because*

*a court has determined that the offender is mentally retarded under standards set forth in decisions of the Ohio Supreme Court or the United States Supreme Court, the trial court that sentenced the offender must conduct a hearing to resentence the offender. At the resentencing hearing, the court must impose upon the offender a sentence of life imprisonment. The sentences of life imprisonment that are available at the hearing, and from which the court must impose sentence, are the same sentences of life imprisonment that were available under R.C. 2929.03(D) or 2909.24 at the time the offender committed the offense for which the sentence of death was imposed. The act states that nothing in these provisions regarding the resentencing of an offender affects the operation of R.C. 2971.03 (regarding sentences imposed upon sexually violent predators under the Sexually Violent Predator Law).*

(2) *Whenever any Ohio court or federal court sets aside, nullifies, or vacates a sentence of death imposed upon the offender because of error that occurred in the sentencing phase of the trial and if the provisions described in (1), above, do not apply, the trial court that sentenced the offender must conduct a new hearing to resentence the offender. As under prior law, if the offender was tried by a jury, the trial court must impanel a new jury for the hearing, and if the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges must conduct the hearing. At the hearing, the court must follow the procedure set forth in division (D) of R.C. 2929.03 (see **COMMENT 2**) in determining whether to impose upon the offender a sentence of death or a sentence of life imprisonment. If, pursuant to that procedure, the court determines that it will impose a sentence of life imprisonment, the sentences of life imprisonment that are available at the hearing, and from which the court must impose sentence, are the same sentences of life imprisonment that were available under R.C. 2929.03(D) or 2929.04 at the time the offender committed the offense for which the sentence of death was imposed.*

**Resentencing after sentence of life without parole is vacated.** Under the act, if a sentence of life imprisonment without parole is imposed upon an offender pursuant to R.C. 2929.021 or 2929.03 and the sentence so imposed is *set aside, nullified, or vacated* for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in R.C. 2929.03 and 2929.04 is unconstitutional, the trial court that sentenced the offender must conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving 25 full years of imprisonment or to life imprisonment with parole eligibility after serving 30 full years of imprisonment (R.C. 2929.06(C)).

**No affect on appeal by state.** The act states that nothing in the provisions described above, or in the next paragraph, limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence

of death, when an appeal of that nature otherwise would be available (R.C. 2929.06(D)).

**Application of provisions.** The act states that the provisions described above apply to all offenders who have been sentenced to death for an aggravated murder committed on or after October 19, 1981, or for terrorism committed on or after May 15, 2002. Also, the provisions described above apply equally to all such offenders sentenced to death prior to, on, or after the act's effective date, including offenders who, on the act's effective date, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any Ohio court or any federal court but who, as of the act's effective date, have not yet been resentenced. (R.C. 2929.06(E).) (See **COMMENT 3.**)

### **Severability**

The act states that, if any provision of the act, any provision of any section in the act, or the application of any such provision to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of other provisions of the act, other sections in the act, other applications of the provision in question, or related sections that can be given effect without the invalid provision or section, and to this end the provisions are severable (Section 4).

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## **COMMENT**

1. Continuing R.C. 2929.05, not in the act, pertains to the appellate review of a sentence of death and the vacation in specified circumstances of a sentence of death imposed upon a person under 18 years of age. It provides as follows:

(A) Whenever sentence of death is imposed pursuant to sections 2929.03 and 2929.04 of the Revised Code, 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 shall review upon appeal the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall 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 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 shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall 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 panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall 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.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) 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 shall give priority over all other cases to the review of judgments in which the sentence of death is imposed and, except as otherwise provided in this

section, shall conduct the review in accordance with the Rules of Appellate Procedure.

(C) At any time after a sentence of death is imposed pursuant to section 2929.022 or 2929.03 of the Revised Code, the court of common pleas that sentenced the offender shall vacate the sentence if the offender did not present evidence at trial that the offender was not eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced and if the offender shows by a preponderance of the evidence that the offender was less than eighteen years of age at the time of the commission of the aggravated murder for which the offender was sentenced. The court is not required to hold a hearing on a motion filed pursuant to this division unless the court finds, based on the motion and any supporting information submitted by the defendant, any information submitted by the prosecuting attorney, and the record in the case, including any previous hearings and orders, probable cause to believe that the defendant was not eighteen years of age or older at the time of the commission of the aggravated murder for which the defendant was sentenced to death.

2. Continuing R.C. 2929.03(D) specifies the procedure a court must follow in determining whether to impose a sentence of death upon a person for whom the law permits that sentence as a possible penalty. It provides as follows:

(D)(1) Death may not be imposed as a penalty for aggravated murder if the offender raised the matter of age at trial pursuant to section 2929.023 of the Revised Code and was not found at trial to have been eighteen years of age or older at the time of the commission of the offense. When death may be imposed as a penalty for aggravated murder, the court shall proceed under this division. When death may be imposed as a penalty, the court, upon the request of the defendant, shall require a pre-sentence investigation to be made and, upon the request of the defendant, shall require a mental examination to be made, and shall require reports of the investigation and of any mental

examination submitted to the court, pursuant to section 2947.06 of the Revised Code. No statement made or information provided by a defendant in a mental examination or proceeding conducted pursuant to this division shall be disclosed to any person, except as provided in this division, or be used in evidence against the defendant on the issue of guilt in any retrial. A pre-sentence investigation or mental examination shall not be made except upon request of the defendant. Copies of any reports prepared under this division shall 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 division. The court, and the trial jury if the offender was tried by a jury, shall consider any report prepared pursuant to this division 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, shall 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 mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, and any other factors in mitigation of the imposition of the sentence of death, and shall 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 defendant shall be given great latitude in the presentation of evidence of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code 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 shall have the burden of going forward with the evidence of any factors in mitigation of the imposition of the sentence of death. The



prosecution shall have 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.

(2) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted pursuant to division (D)(1) of this section, the trial jury, if the offender was tried by a jury, shall 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 shall recommend to the court that the sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(b) 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, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment, the court shall



impose the sentence recommended by the jury upon the offender. If the sentence is a sentence of life imprisonment without parole imposed under division (D)(2)(b) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section 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 shall impose sentence of **death** on the offender. Absent such a finding by the court or panel, the court or the panel shall impose one of the following sentences on the offender:

(a) Except as provided in division (D)(3)(b) of this section, one of the following:

(i) Life imprisonment without parole;

(ii) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;

(iii) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.

(b) 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 shall be served pursuant to section 2971.03 of the Revised Code.

3. Ohio's Capital Sentencing Law, which was enacted to replace a prior law that the U.S. Supreme Court, in 1978, had declared to be unconstitutional, took effect on October 19, 1981. Changes have been made to several provisions of that Law since its enactment.

When initially enacted, R.C. 2929.06 specified that, if an offender was sentenced to death and the sentence was vacated upon appeal because the reviewing court could not affirm the sentence under the standards imposed by R.C. 2929.05, was vacated upon appeal for the sole reason that the statutory procedure for imposing the sentence of death that was set forth in R.C. 2929.03 and 2929.04 was unconstitutional, or was vacated pursuant to R.C. 2929.05(C), the trial court that sentenced the offender had to hold a hearing to resentence the offender. At the resentencing hearing, the court was required to sentence the offender to life imprisonment with parole eligibility after serving 20 full years or 20 full years of imprisonment. When initially enacted, R.C. 2929.06 did not contain any provision similar to the version of R.C. 2929.06 in effect immediately prior to the act, to address the resentencing of a person sentenced to death whose sentence was overturned because of error that occurred in the sentencing phase of the trial and that was not covered by the provision described in the preceding sentence. The provisions of R.C. 2929.06, as initially enacted, were similar to, and the basis for, prior R.C. 2929.06(A), as described in paragraph (1) under **"Resentencing, after vacating, etc., of death sentence or sentence of life without parole," "Prior law,"** as set forth in the **CONTENT AND OPERATION** portion of this analysis.

In September 1987, the Ohio Supreme Court addressed the resentencing of an offender sentenced to death whose sentence was overturned because of error that occurred in the sentencing phase of the trial. The Court, in *State v. Penix* (1987), 32 Ohio St.3d 369, held in its syllabus that: (a) when a person charged with aggravated murder and a specification of an aggravating circumstance is tried by a jury and convicted of the offense and the specification, under the version of the law then in effect (i.e., R.C. 2929.03 and 2929.06), *a death sentence could be imposed by the trial judge only upon the recommendation of the same jury that tried the guilt phase of the trial*, and (b) thus, if the person's sentence of death was vacated due to error occurring at the penalty phase of the trial and the case was remanded to the trial court, the trial court, in resentencing the offender, was limited to the sentences of life imprisonment that were available at the time the offender committed the aggravated murder.

In 1996, Sub. S.B. 258 of the 121st General Assembly amended R.C. 2929.06 to address the resentencing of an offender who was sentenced to death and whose sentence was overturned because of error that occurred in the



sentencing phase of the trial. The act took effect on October 19, 1996. It addressed the issue by enacting existing R.C. 2929.06(B), as described in paragraph (2) under "Resentencing, after vacating, etc., of death sentence or sentence of life without parole," "Prior law," as set forth in the **CONTENT AND OPERATION** portion of this analysis. Under that provision, if an offender who is being resentenced was tried by a jury, the trial court will impanel a new jury for the sentencing hearing, and the offender faces the possibility of having a new sentence of death imposed upon him or her.

In September 2004, the Ohio Supreme Court addressed the application of R.C. 2929.06(B), as enacted in Sub. S.B. 258 of the 121st General Assembly, to an offender sentenced to death for an offense committed prior to October 19, 1996 (the effective date of the act), whose sentence was overturned because of error that occurred in the sentencing phase of the trial. The Court, in *State v. Williams* (2004), 103 Ohio St.3d 112, held in its syllabus that, "(b)ecause the Revised Code is silent as to whether current R.C. 2929.06(B) applies retroactively, it applies only prospectively. Therefore, current R.C. 2929.06 is inapplicable for resentencing an offender whose offenses occurred prior to the statute's effective date of October 16, 1996. Rather, the law in effect at the time of the offense applies."

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-14-03	p. 475
Reported H. Criminal Justice	10-15-03	p. 1124
Passed House (89-7)	11-13-03	pp. 1172-1173
Reported, S. Judiciary	11-29-04	p. 2315
Passed Senate (23-6)	11-30-04	pp. 2329-2333
House concurred in Senate amendments (62-26)	12-01-04	pp. 2322-2323

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