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Bill Analysis
Legislative Service Commission

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(As Passed by the House)

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

BILL 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.

CONTENT AND OPERATION

Overview

Under existing 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. 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 bill 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.)

Imposition of sentence for aggravated murder

When indictment does not include specifications of aggravating circumstances

Existing law. If the indictment or count in the indictment charging aggravated murder does not contain one or more specifications of aggravating circumstances (see **COMMENT 1, 2, and 3**) and the offender is not convicted of and does 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 must impose a sentence of life imprisonment with parole eligibility after serving 20 years of imprisonment. 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); see **COMMENT 4**.)

Operation of the bill. Under the bill, 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 bill);
- (2) Life imprisonment with parole eligibility after serving 20 years of imprisonment (existing law);
- (3) Life imprisonment with parole eligibility after serving 25 full years of imprisonment (added by the bill);

(4) Life imprisonment with parole eligibility after serving 30 full years of imprisonment (added by the bill);

(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 (existing law).

Offender found not guilty of specifications of aggravating circumstances

Existing law. If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances and the offender is not convicted of and does 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 must impose a sentence of life imprisonment with parole eligibility after serving 20 years of imprisonment on the offender. 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 bill. Under the bill, 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 bill);

(2) Life imprisonment with parole eligibility after serving 20 years of imprisonment (existing law);

(3) Life imprisonment with parole eligibility after serving 25 full years of imprisonment (added by the bill);

(4) Life imprisonment with parole eligibility after serving 30 full years of imprisonment (added by the bill);

(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 (existing law).

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(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 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 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.

(j) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit the offense of terrorism.

3. R.C. 2929.04(B), not in the bill, provides that, if one or more of the aggravating circumstances described above in **COMMENT 2** are proved beyond a reasonable doubt and the law's provision restricting the use of capital punishment on an offender under 18 years of age do not apply, 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.

4. R.C. 2967.13, not in the bill, sets forth parole eligibility criteria for offenders. Regarding offenders sentenced to a term of life imprisonment, it specifies that, except as described below regarding sentences of life imprisonment without parole, a prisoner serving a sentence of imprisonment for life for an offense committed on or after July 1, 1996, is not entitled to any earned credit under R.C. 2967.193 (not in the bill) and becomes eligible for parole as follows: (a) if sentence of imprisonment for life was imposed for the offense of murder, at the expiration of the prisoner's minimum term, (b) if a sentence of imprisonment for life with parole eligibility after serving 20 years of imprisonment was imposed pursuant to R.C. 2929.022 (not in the bill) or 2929.03, after serving a term of 20 years, (c) if a sentence of imprisonment for life with parole eligibility after serving 25 full years of imprisonment was imposed pursuant to R.C. 2929.022 or 2929.03, after serving a term of 25 full years, (d) if a sentence of imprisonment for life with parole eligibility after serving 30 full years of imprisonment was imposed pursuant to R.C. 2929.022 (not in the bill) or 2929.03, after serving a term of 30 full years, (e) if a sentence of imprisonment for life was imposed for rape, after serving a term of ten full years' imprisonment, or (f) if a sentence of imprisonment for life

with parole eligibility after serving 15 years of imprisonment was imposed for a violation of R.C. 2927.24 (not in the bill), after serving a term of 15 years.

Except as described below regarding sentences of life imprisonment without parole, a prisoner serving a sentence of imprisonment for life with parole eligibility after serving 20 years of imprisonment or a sentence of imprisonment for life with parole eligibility after serving 25 full years or 30 full years of imprisonment imposed pursuant to R.C. 2929.022 or 2929.03 for an offense committed on or after July 1, 1996, consecutively to any other term of imprisonment, becomes eligible for parole after serving 20 years, 20 full years, or 30 full years, as applicable, as to each such sentence of life imprisonment, which shall not be reduced for earned credits under R.C. 2967.193, plus the term or terms of the other sentences consecutively imposed or, if one of the other sentences is another type of life sentence with parole eligibility, the number of years before parole eligibility for that sentence. Except as described below regarding sentences of life imprisonment without parole, a prisoner serving consecutively two or more sentences in which an indefinite term of imprisonment is imposed becomes eligible for parole upon the expiration of the aggregate of the minimum terms of the sentences.

A prisoner serving a sentence of life imprisonment without parole imposed pursuant to any provision of law that authorizes such a sentence (e.g., R.C. 2907.02, 2929.03, 2929.06, or 2971.03) is not eligible for parole and must be imprisoned until death.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-14-03	p. 475
Reported H. Criminal Justice	10-15-03	p. 1124
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