



Diana C. Talarek

Bill Analysis
Legislative Service Commission

H.B. 600

126th General Assembly
(As Introduced)

**Reps. Flowers, Hughes, Fende, Law, Perry, J. McGregor, Bulp, Gilb,
C. Evans, D. Evans, Setzer**

BILL SUMMARY

- Requires that when the death penalty may be imposed, the court must order, prior to the determination of sentence, the preparation of a victim impact statement containing specified information, and allows one or more family members of the victim's family who choose to do so to furnish for inclusion in the victim impact statement written or oral statements regarding the effect of the offense on the victim's family.
- Provides that if any member of the victim's family elects not to participate in the preparation of a victim impact statement, this fact does not constitute a factor in mitigation of the imposition of the sentence of death.
- For consideration when deciding whether to impose the death penalty, requires a report that lists all "prior homicide conviction-aggravating factors" that apply to the defendant to be prepared and submitted to the court that is determining whether to impose a sentence of death.
- Specifies that the court that is determining whether to impose a sentence of death must consider the victim impact statements and the reports of any prior homicide conviction-aggravating factors and decide whether the combined effect of the aggravating circumstances, the impact of the offense as demonstrated through any victim impact statement that was introduced, and the prior homicide conviction-aggravating circumstances factors, if any, outweigh the mitigating factors present in the case.

CONTENT AND OPERATION

Overview

As described below in "Summary of the death penalty in Ohio," current law, unchanged by the bill, provides that the death penalty may only be imposed upon an offender who is convicted of or pleads guilty to aggravated murder, is convicted of or pleads guilty to one or more specifications of aggravating circumstances, and, if the offender raised the matter of age, was found at trial to have been at least 18 years of age at the time of the commission of the offense. Before the death penalty may be imposed, the trial jury and trial judge or panel of three judges, as appropriate, must consider specified factors, described below in "Factors to consider when deciding whether to impose a death sentence," and weigh all the mitigating circumstances against the aggravating circumstances.

The bill adds two factors that the trial jury and trial judge or panel of three judges must consider when deciding whether to impose the death penalty: a victim impact statement and a report of any "prior homicide conviction-aggravating factors."

The bill

The bill requires that when the death penalty may be imposed, the court must order, prior to the determination of sentence, the preparation of a victim impact statement by either the department of probation of the county in which the victim of the offense resided, the court's own probation officer, or by a victim assistance program that is operated by the state, any county or municipal corporation, or any other governmental agency. The bill allows one or more family members of the victim's family who choose to do so to furnish for inclusion in the victim impact statement written or oral statements regarding the effect of the offense on the victim's family. This victim impact statement must identify the victim of the aggravated murder, itemize any economic loss suffered by the victim's family as a result of the aggravated murder, identify the physical injury that resulted in the victim's death, identify any psychological impact experienced by the victim's family, and contain any other information related to the impact of the aggravated murder upon the victim's family that the court requires. The bill provides that if any member of the victim's family elects not to participate in the preparation of a victim impact statement, this fact does not constitute a factor in mitigation of the imposition of the sentence of death. (R.C. 2929.03(D), 2930.13, and 2947.051(A)(1) and (B)(1).)

For consideration when deciding whether to impose the death penalty, the bill also requires a report that lists all "prior homicide conviction-aggravating

factors" that apply to the defendant to be prepared by the person or entity that prepares or would prepare a report of the pre-sentence investigation report (mentioned below in "Summary of the death penalty in Ohio") (R.C. 2929.03(D)). The bill defines "prior homicide conviction-aggravating factor" as meaning, regarding an offender who is convicted of or pleads guilty to and is being sentenced for aggravated murder and one or more specifications of aggravating circumstances, any prior conviction of the offender for, or plea of guilty by the offender to, any of the following (R.C. 2929.01(AAA)):

(1) Aggravated murder or murder that was not the basis of a specification of an aggravating circumstance that was contained in the indictment or count in the indictment charging the aggravated murder for which sentence is being imposed;

(2) Voluntary manslaughter;

(3) A violation of an existing or former law of Ohio or any other state or the United States, substantially equivalent to an offense listed in (1) or (2), above.

The bill specifies that both the victim impact statement and the report of all prior homicide conviction-aggravating factors that apply to the defendant must be submitted to the court that is deciding whether to impose a sentence of death, the trial jury if the offender was tried by a jury, the prosecutor, and the offender or the offender's counsel. The trial jury and trial judge or panel of three judges must consider the victim impact statements and the reports of any prior homicide conviction-aggravating factors and decide whether the combined effect of the aggravating circumstances (described below in "Aggravating circumstances"), the impact of the offense as demonstrated through any victim impact statement that was introduced, and the prior homicide conviction-aggravating circumstances factors, if any, outweigh the mitigating factors present in the case. As described below in "Summary of the death penalty in Ohio," if the mitigating factors are outweighed, the death sentence is imposed. (R.C. 2929.03(D) and 2929.04(B).)

In the same manner as other factors considered by the court are stated as specific findings when the death penalty may be imposed (discussed below in "Factors to consider when deciding whether to impose a death sentence"), the court must state whether a victim impact statement was considered, the existence of any prior homicide conviction-aggravating circumstances factors regarding the offender, and the reasons why or why not the combined effect of the aggravating circumstances, victim impact, and prior homicide conviction-aggravating circumstances that apply to the offender were or were not sufficient to outweigh the mitigating factors (R.C. 2929.03(F)).

In the same manner as discussed below in "*Appellate review of a death sentence*," an appellate court reviewing a sentence of death must consider the victim impact statement and any prior homicide conviction-aggravating circumstances and determine whether the combined effect of the aggravating circumstances, victim impact, and prior homicide conviction-aggravating circumstances that apply to the offender were or were not sufficient to outweigh the mitigating factors (R.C. 2929.05).

Summary of the death penalty in Ohio

Current Ohio law only allows the death penalty for the offense of aggravated murder. R.C. 2903.01 prohibits the following acts:

(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, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, 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 another when the person is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who has broken that detention;

(5) 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.

(b) It is the offender's specific purpose to kill a law enforcement officer.

Whoever violates one of these prohibitions is guilty of aggravated murder and must either be sentenced to life imprisonment or if the death penalty is applicable, death, as discussed below (R.C. 2903.01(F) and 2929.02(A)).

Aggravating circumstances

The death penalty may only be imposed if the indictment or count in the indictment specifies one of the following aggravating circumstances, and the aggravating circumstance is proved beyond a reasonable doubt. These aggravating circumstances include any of the following (R.C. 2929.04(A)):

(1) 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 these offices.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under certain types of detention or while the offender was at large after having broken detention.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

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

Factors to consider when deciding whether to impose a death sentence

If one or more of the aggravating circumstances listed above is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age, or if the offender, after raising the matter of age, was found at trial to have been 18 years of age or older at the time of the commission of the offense, the trial judge and trial jury, or panel of three judges (depending on who tried the case) must determine whether the death penalty is to be imposed. In determining whether to impose the death penalty, the jury, and if the jury recommends a sentence of death, trial judge or the panel of three judges must consider a pre-sentence investigation report, if the defendant requests it, a report regarding a mental examination of the defendant, if the defendant requests it and any evidence raised at trial that is relevant to the aggravating circumstances the defendant was found guilty of committing or to any factors in mitigation of the imposition of a sentence. In addition, the jury and trial judge or panel of three judges must 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 statement, if any, of the defendant, the arguments, if any, of the prosecution and defense that are relevant to the penalty, and the following mitigating factors (R.C. 2929.03(D)(1) and 2929.04(B)):

- (1) The nature and circumstances of the offense;
- (2) The history, character, and background of the offender;
- (3) Whether the victim of the offense induced or facilitated the offense;
- (4) 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;

(5) 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;

(6) The youth of the offender;

(7) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(8) 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;

(9) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

The defendant must have great latitude in the presentation of evidence of mitigating factors and of any other factors in mitigation of the imposition of the sentence of death. The defendant has the burden of going forward with the evidence of any mitigating factors. The prosecution, then, has the burden of proving beyond a reasonable doubt that the aggravating circumstances the defendant was found guilty of committing are sufficient to outweigh the mitigating factors (R.C. 2929.03(D)(1) and 2929.04(C)).

If the trial jury and, if the jury recommends a sentence of death, the court or the panel of three judges finds, by proof beyond a reasonable doubt, that the aggravating circumstances outweigh the mitigating circumstances, the court or panel must impose the death penalty.¹ When the death penalty is imposed, the court or panel must state in a separate opinion its specific findings as to the existence of any of the mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances were sufficient to outweigh the mitigating factors. (R.C. 2929.03(D)(2), (D)(3), and (F).)

¹ *If an offender who is convicted of aggravated murder is not sentenced to death, the court must sentence the offender to a term of life imprisonment without parole, life imprisonment with parole eligibility after serving 20 years of imprisonment, 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, depending on why the sentence of death was not imposed (R.C. 2929.03 and 2929.06).*

Appellate review of a death sentence

When a sentence of death is imposed, the appellate court is required to review upon appeal the sentence of death at the same time that it reviews the other issues in the case. The judgment in the case and the sentence of death are to be reviewed in the same manner as any other criminal case, except that the court must review and independently weigh all of the facts and other evidence disclosed in the record in the case, 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 consider whether the sentence of death is appropriate. In determining whether the sentence of death is appropriate, the appellate court must consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. The court must also 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 must determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The appellate court may only affirm a sentence of death if the 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. (R.C. 2929.05.)

If a death sentence is set aside, nullified, or vacated for any of the following reasons, the trial court that sentenced the offender must hold a hearing to re-sentence the offender to a term of life imprisonment that was available at the time of original sentencing (R.C. 2929.06):

- (1) The appellate court could not affirm the sentence of death, as discussed in the preceding paragraph;
- (2) For the sole reason that the statutory procedure for imposing the sentence of death is ruled unconstitutional;
- (3) The defendant was under the age of 18 at the time of the commission of the aggravated murder;
- (4) A court has determined that the offender is mentally retarded under standards set forth in decisions of the Supreme Court of Ohio or the United States Supreme Court.

However, if a death sentence is set aside, nullified, or vacated because of error that occurred in the sentencing phase of the trial and if none of the four reasons listed above apply, the trial court that sentenced the offender must conduct

a new hearing to re-sentence the offender to either a sentence of death or life imprisonment. If the offender was tried by a jury, the trial court must 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 must conduct the hearing (R.C. 2929.06(B)).

HISTORY

ACTION	DATE
Introduced	05-23-06

h0600-i-126.doc/kl

