



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 118

129th General Assembly  
(As Passed by the House)

**Reps.** Fende, Combs, Yuko, O'Brien, Maag, Hackett, Buchy, Mallory, Blessing, Szollosi, DeGeeter, Bubb, Boyd, Winburn, R. Adams, Celebrezze, Damschroder, Hayes, Huffman, Johnson, Kozlowski, Luckie, McGregor, Ruhl, Schuring, Sprague, Young, Batchelder

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## BILL SUMMARY

### Aggravated murder of a judge, magistrate, or prosecutor

- Expands the offense of "aggravated murder" to prohibit a person from purposely causing the death of a judge, magistrate, or prosecutor whom the offender knows or has reasonable cause to know is a judge, magistrate, or prosecutor when (1) the victim, at the time of the commission of the offense, is engaged in the victim's duties, or (2) it is the offender's specific purpose to kill a judge, magistrate, or prosecutor.
- Expands one of the aggravating circumstances used in sentencing persons convicted of aggravated murder to include that the victim of the offense was a judge, magistrate, or prosecutor whom the offender had reasonable cause to know or knew to be a judge, magistrate, or prosecutor, 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 judge, magistrate, or prosecutor.

### Assault offenses when the victim is a judge, magistrate, or prosecutor

- Increases the penalties for various assault offenses when the victim is a judge, magistrate, or prosecutor generally as follows:
  - Felonious assault – from a second degree felony to a first degree felony with a mandatory prison term if the victim suffers serious physical harm.
  - Aggravated assault – from a fourth degree felony to a third degree felony with a mandatory prison term if the victim suffers serious physical harm.

--Assault – from a first degree misdemeanor to a fourth degree felony if the offense occurs during the performance of official duties with a mandatory prison term of at least 12 months if the victim suffers serious physical harm.

### **Aggravated menacing when the victim is a judge, magistrate, or prosecutor**

- Increases the penalty for the offense of "aggravated menacing" when the victim is a judge, magistrate, or prosecutor so that:
  - If the victim is a judge, magistrate, or prosecutor and the offense relates to the judge's, magistrate's, or prosecutor's performance or anticipated performance of official responsibilities or duties, it is a fifth degree felony;
  - If the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was a judge, magistrate, or prosecutor and that prior offense related to the judge's, magistrate's, or prosecutor's performance or anticipated performance of official responsibilities or duties, it is a fourth degree felony.

### **Threatening a judge, magistrate, or prosecutor**

- Prohibits a person, with intent to influence or interfere with a judge, magistrate, or prosecutor in the performance of the judge's, magistrate's, or prosecutor's official duties or to retaliate against a judge, magistrate, or prosecutor for any decision made or action taken in the performance of the judge's, magistrate's, or prosecutor's official duties, from knowingly threatening a judge, magistrate, or prosecutor with physical harm to the person or property of the judge, magistrate, or prosecutor, the judge's, magistrate's, or prosecutor's unborn, or a member of the judge's, magistrate's, or prosecutor's immediate family.
- Specifies that the offense of "threatening a judge, magistrate, or prosecutor" is a fifth degree felony.

### **Exemption from Public Records Law**

- Excludes specified probation officer residential and familial information from the application of the Public Records Law.

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## CONTENT AND OPERATION

### Aggravated murder of a judge, magistrate, or prosecutor

#### Prohibition

Existing law prohibits a person from doing any of the following: (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, the offense of 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 at the time of the commission of the offense, (4) if the person is under detention as a result of having been found guilty of or having pleaded guilty to a felony or breaks that detention, purposely causing the death of another, or (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 the victim, at the time of the commission 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 violation of any of these prohibitions is the offense of "aggravated murder," and the offender must be sentenced to death or be imprisoned for life in accordance with R.C. 2929.022, 2929.03, and 2929.04 (see "**Aggravated murder sentencing mechanism**," below). In addition, the person may be fined not more than \$25,000.<sup>1</sup>

The bill expands the offense of aggravated murder to prohibit a person from purposely causing the death of a *judge, magistrate, or prosecutor* whom the offender

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<sup>1</sup> R.C. 2903.01.

knows or has reasonable cause to know is a *judge, magistrate, or prosecutor* when either of the following apply:<sup>2</sup>

(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties;

(2) It is the offender's specific purpose to kill a *judge, magistrate, or prosecutor*.

As used in all of the bill's provisions:<sup>3</sup>

**"Judge"** means a judge of a court created under the Ohio Constitution or Ohio statutes or of a United States court located in Ohio.

**"Magistrate"** means a magistrate of a court created under the Ohio Constitution or Ohio statutes or of a United States court located in Ohio.

**"Prosecutor"**<sup>4</sup> includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case.

### **Aggravated murder sentencing mechanism**

The bill expands the list of aggravating circumstances that can lead to the imposition of the death penalty. Under the bill, it is an aggravating circumstance if the victim of the aggravated murder was a judge, magistrate, or prosecutor whom the offender had reasonable cause to know or knew to be a judge, magistrate, or prosecutor and either of the following apply:<sup>5</sup>

(1) The victim, at the time of the commission of the offense, was engaged in the victim's duties;

(2) It was the offender's specific purpose to kill a judge, magistrate, or prosecutor.

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<sup>2</sup> R.C. 2903.01(E).

<sup>3</sup> R.C. 2903.01(G)(3), (4), and (5), 2903.11(E)(7) and (8), 2903.12(C)(3) and (4), 2903.13(D)(11) and (12), 2903.21(C), 2903.23(A)(2) and (3), and 2929.04(A)(6).

<sup>4</sup> R.C. 2935.01(C) (not in the bill).

<sup>5</sup> R.C. 2929.04(A)(6).

Under existing law, imposition of the death penalty for aggravated murder is precluded unless one or more aggravating circumstances is specified in the indictment or count in the indictment. The aggravating circumstance must be proven beyond a reasonable doubt. Existing law lists a series of aggravating circumstances that may result in the imposition of the death penalty. One example is if the victim of the offense is a law enforcement officer whom the offender had reasonable cause to know or knew to be a law enforcement officer and either of the following apply:<sup>6</sup>

(1) The victim, at the time of the commission of the offense, was engaged in the victim's duties;

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

An offender who is convicted of or pleads guilty to aggravated murder is sentenced to death or is imprisoned for life under a special sentencing mechanism.<sup>7</sup> The offender is not subject to the potential imposition of a sentence of death unless, in addition to the aggravated murder, the offender also is convicted of or pleads guilty to one or more specifications of an aggravating circumstance (special sentencing provisions apply if the offender is under 18).

If an offender is convicted of or pleads guilty to aggravated murder and one or more specifications of an aggravating circumstance and is tried before a jury, the jury conducts a sentencing hearing in which it balances the aggravating circumstances of which the offender was convicted or to which the offender pleaded guilty against any mitigating factors present. If the jury makes specified findings, it must recommend a sentence of death to the trial court; if it does not make those findings, it must recommend a life sentence.

The law provides for the following types of life sentences – life without parole, life with parole eligibility after serving 25 or 30 full years of imprisonment, or life under the Sexually Violent Predator Sentencing Law. If the jury recommends a life sentence, the trial court must impose a life sentence.

If the jury recommends a sentence of death, the trial court also must conduct the balancing test. If it makes the specified findings, it must impose a sentence of death; if it does not make those findings, it must impose one of the above-listed life sentences.

If the offender was tried without a jury, the three-judge panel that tried the offender conducts a sentencing hearing in which it balances the aggravating

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<sup>6</sup> R.C. 2929.04(A)(6).

<sup>7</sup> R.C. 2929.022 to 2929.06, not in the bill.

circumstances of which the offender was convicted or to which the offender pleaded guilty against any mitigating circumstances present. If the three-judge panel makes the specified findings, it must impose a sentence of death; if it does not make those findings, it must impose one of the above-listed life sentences.

## **Assault offenses when the victim is a judge, magistrate, or prosecutor**

### **Felonious assault**

The bill modifies the penalty for the offense of felonious assault to provide increased penalties when the victim of the offense is a judge, magistrate, or prosecutor. Under the bill, felonious assault, as described in clause (1) or (2) below, when the victim is a judge, magistrate, or prosecutor is a first degree felony. If the judge, magistrate, or prosecutor suffered serious physical harm as a result of the offense, the offense is a first degree felony, and the court must impose as a mandatory prison term one of the prison terms prescribed for a first degree felony. Generally, felonious assault is a second degree felony.<sup>8</sup>

Existing law generally establishes felonious assault as any of the following:<sup>9</sup>

- (1) Knowingly causing serious physical harm to another or to another's unborn;
- (2) Knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance;
- (3) With knowledge of having tested positive as a carrier of a virus that causes AIDS, knowingly:
  - Engaging in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;
  - Engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes AIDS;

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<sup>8</sup> R.C. 2903.11(D).

<sup>9</sup> R.C. 2903.11(A).

--Engaging in sexual conduct with a person under 18 who is not the spouse of the offender.<sup>10</sup>

### **Aggravated assault**

The bill modifies the penalty for the offense of aggravated assault to provide increased penalties when the victim of the offense is a judge, magistrate, or prosecutor. Thus, if the victim of the offense is a judge, magistrate, or prosecutor, aggravated assault is a third degree felony. If the judge, magistrate, or prosecutor suffered serious physical harm as a result of the commission of the offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a third degree felony. Generally, under existing law, aggravated assault is a fourth degree felony.<sup>11</sup>

Existing law defines the offense of aggravated assault by prohibiting a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from doing either of the following:<sup>12</sup>

- (1) Knowingly causing serious physical harm to another or to another's unborn;
- (2) Knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

### **Assault**

Under current law, assault is defined to prohibit a person from knowingly causing or attempting to cause physical harm to another or to another's unborn, or recklessly causing serious physical harm to another or another's unborn. Assault is generally a first degree misdemeanor. However, the penalty for assault is increased under certain circumstances. For instance, if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a fourth degree felony, with higher penalties if the offender has committed previous offenses.<sup>13</sup>

The bill modifies the penalties for the offense of assault to provide increased penalties when the victim of the offense is a judge, magistrate, or prosecutor. Thus, if the victim is a judge, magistrate, or prosecutor, while in the performance of the judge's, magistrate's, or prosecutor's official duties, assault is a fourth degree felony rather than

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<sup>10</sup> R.C. 2903.11(B).

<sup>11</sup> R.C. 2903.12(B).

<sup>12</sup> R.C. 2903.12(A).

<sup>13</sup> R.C. 2903.13(A), (B), and (C).

a first degree misdemeanor as under current law. This increased penalty applies to a situation in which the offender has knowingly caused or attempted to cause physical harm to the victim and a situation in which the offender has recklessly caused serious physical harm to the victim.<sup>14</sup> If the judge, magistrate, or prosecutor suffers serious physical harm and the offender has recklessly caused the serious physical harm, assault is a fourth degree felony, and the court must impose as a mandatory prison term one of the prison terms prescribed for a fourth degree felony that is at least 12 months in duration. If the judge, magistrate, or prosecutor suffers serious physical harm, there is no requirement that the offense occur while the judge, magistrate, or prosecutor is performing official duties.<sup>15</sup>

### **Aggravated menacing when the victim is a judge, magistrate, or prosecutor**

Existing law prohibits a person from knowingly causing another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. A violation of this prohibition is the offense of "aggravated menacing." Generally, aggravated menacing is a first degree misdemeanor.<sup>16</sup>

The bill increases the penalty for the offense of aggravated menacing when the victim of the offense is a judge, magistrate, or prosecutor. Specifically, under the bill:<sup>17</sup>

(1) If the victim of the offense is a judge, magistrate, or prosecutor and the offense relates to the *judge's, magistrate's, or prosecutor's* performance or anticipated performance of official responsibilities or duties, aggravated menacing is a fifth degree felony;

(2) If the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was a judge, magistrate, or prosecutor, and that prior offense related to the judge's, magistrate's, or prosecutor's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a fourth degree felony.

### **Threatening a judge, magistrate, or prosecutor**

The bill prohibits a person, with intent to influence or interfere with a judge, magistrate, or prosecutor in the performance of the judge's, magistrate's, or prosecutor's

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<sup>14</sup> R.C. 2903.13(C)(3).

<sup>15</sup> R.C. 2903.13(C)(4).

<sup>16</sup> R.C. 2903.21(A) and (B).

<sup>17</sup> R.C. 2903.21(A) and (B).

official duties or to retaliate against a *judge, magistrate, or prosecutor* for any decision made or action taken in the performance of the judge's, magistrate's, or prosecutor's official duties, from knowingly threatening a judge, magistrate, or prosecutor with physical harm to the person or property of the judge, magistrate, or prosecutor, the judge's, magistrate's, or prosecutor's unborn, or a member of the judge's, magistrate's, or prosecutor's immediate family. A violation of this prohibition is the offense of "threatening a judge, magistrate, or prosecutor," a fifth degree felony. (See "**Similar existing offenses**," below.)

The bill specifies that, as used in these provisions, "immediate family" includes a person's spouse, brothers and sisters of the whole or half blood, children, including adopted children and stepchildren, parents, and grandparents.<sup>18</sup>

### **Similar existing offenses**

Existing law sets forth an offense that relates to an attempt to intimidate a public official in the performance of the official's duties and another that relates to retaliation against a public official for acts undertaken in the performance of those duties. The existing offenses provide as follows:

(a) ***Intimidation***. Existing R.C. 2921.03, not in the bill, prohibits a person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, from attempting to influence, intimidate, or hinder a "public servant," "party official," or witness in the discharge of the person's duty. A violation of the prohibition is the offense of "intimidation," a third degree felony.

As used in R.C. 2921.03, "public servant" means any of the following: (i) any "public official" ("public official" means any elected or appointed officer, employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers), (ii) any person performing *ad hoc* a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, or (iii) any person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate (a person is a candidate for purposes of this clause if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate

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<sup>18</sup> R.C. 2903.23.

in any primary, general, or special election). Also, "party official" means any person who holds an elective or appointive post in a political party in the United States or Ohio, by virtue of which the person directs, conducts, or participates in directing or conducting party affairs at any level of responsibility.<sup>19</sup>

(b) ***Retaliation***. Existing R.C. 2921.05 prohibits a person, purposely and by force or by unlawful threat of harm to any person or property, from doing either of the following: (i) retaliating against a "public servant," a "party official," or an attorney or witness who was involved in a civil or criminal action or proceeding because the public servant, party official, attorney, or witness discharged the duties of the public servant, party official, attorney, or witness, or (ii) retaliating against the victim of a crime because the victim filed or prosecuted criminal charges. A violation of either prohibition is the offense of "retaliation," a third degree felony.

## Public Records Law

### Exemption from Public Records Law

The version of R.C. 149.43 that appears in the bill is not the current version of that section. R.C. 149.43 was amended by Sub. H.B. 64 of the 129th General Assembly (effective October 17, 2011) to expand the current exemption in Public Records Law from the definition of "public record" for "peace officer, parole officer, prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, EMT, or investigator of the Bureau of Criminal Identification and Investigation residential and familial information" so that the exemption also applies to probation officer residential and familial information.<sup>20</sup> Therefore, the amendments to that section made by this bill are now moot.

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## HISTORY

ACTION	DATE
Introduced	02-22-11
Reported, H. Criminal Justice	01-25-12
Passed House (78-17)	05-08-12

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<sup>19</sup> R.C. 2921.01, not in the bill.

<sup>20</sup> R.C. 149.43(A)(1)(p).

