



Ohio Legislative Service Commission

Bill Analysis

David M. Gold

Am. H.B. 508

130th General Assembly
(As Reported by H. Judiciary)

Reps. Butler, Smith, Becker, Terhar, Derickson, Hood, Stebelton, Johnson, Blessing, Wachtmann

BILL SUMMARY

- Expands the offense of murder to include causing the death of another as a proximate result of the offender's providing the other person a controlled substance or controlled substance analog in violation of the drug-trafficking statute.
 - Establishes basic penalties for murder through the provision of a controlled substance or controlled substance analog of imprisonment for life with parole eligibility after 20 years or 25 full years if the victim is an adult and life imprisonment with parole eligibility after 30 years or life without parole if the victim is a minor.
 - Provides for enhanced penalties under specified conditions.
-

CONTENT AND OPERATION

Murder through provision of controlled substance or controlled substance analog

The bill expands the offense of murder to include causing the death of another as a proximate result of the offender's providing the other person a controlled substance or controlled substance analog in violation of the drug-trafficking statute. A person causes the death of another person as a proximate result of providing the other person a controlled substance or controlled substance analog if the other person died as a result of either an overdose of that controlled substance or controlled substance analog or an overdose of that controlled substance or controlled substance analog combined with one or more other controlled substances or controlled substance analog, with alcohol, or

with one or more other controlled substances or controlled substance analog and alcohol.¹

Penalties

In the absence of special circumstances, murder is punishable by imprisonment for an indefinite term of 15 years to life.² The bill establishes two new sentencing schemes for murder committed through the provision of a controlled substance or controlled substance analog, depending on the age of the victim. It also modifies the statute that authorizes or requires the imposition of an additional prison term in certain cases.

Adult victim

If the victim is 18 years of age or older, the sentence is imprisonment for life with parole eligibility after 20 years or 25 full years (see **COMMENT 1**). However, if the offender is also convicted of both a sexual motivation specification and a sexually violent predator specification, the sentence is imprisonment for life without parole.³ (See **COMMENT 2**.)

In addition to imprisonment, the court may impose a fine of not more than \$15,000.⁴

Minor victim

If the victim is less than 18 years of age, the court must sentence the offender to life imprisonment with parole eligibility after 30 years or to life without parole. However, if the offender is also convicted of both a sexual motivation specification and a sexually violent predator specification, the sentence is imprisonment for life without parole. The court may also impose a fine of not more than \$15,000.⁵

¹ R.C. 2903.02(C), (D), and (E)(2); R.C. 2925.03 (drug-trafficking offenses; not in the bill).

² R.C. 2929.02(B)(1).

³ R.C. 2929.02(B)(2) and (5).

⁴ R.C. 2929.02(B)(6).

⁵ R.C. 2929.02(B)(4), (5), and (6).



Additional prison term

Mandatory additional term

A sentencing court *must* impose the longest prison term authorized or required for a felony offense and an additional definite prison term of one to ten years if all of the following criteria are met:⁶

- (1) The offender is convicted of a repeat violent offender specification;
- (2) The offender, within the preceding 20 years, has been convicted of three or more of the following offenses or substantially similar offenses under the law of any state or the United States: aggravated murder, murder, any felony of the first or second degree that is an offense of violence, or an attempt to commit any of these offenses if the attempt is a felony of the first or second degree;
- (3) The offense of which the offender currently is convicted is any of certain specified offenses, including murder if *the court does not impose a sentence of life without parole* (italicized language added by the bill).

Discretionary additional term

If the foregoing conditions do not all apply, the court *may* impose, in addition to the longest prison term authorized or required for a felony offense, an additional definite prison term of one to ten years if all of the following criteria are met:⁷

- (1) The offender is convicted of a repeat violent offender specification;
- (2) The offense of which the offender currently is convicted is any of certain specified offenses, including murder if *the court does not impose a sentence of life imprisonment without parole* (italicized language added by the bill);
- (3) The court imposes the longest prison term for the offense that is not life imprisonment without parole;
- (4) The court finds that the prison terms otherwise imposed are inadequate to punish the offender and protect the public from future crime, because of the likelihood of recidivism;

⁶ R.C. 2929.14(B)(2)(b).

⁷ R.C. 2929.14(B)(2)(a).



(5) The court finds that the prison terms otherwise imposed are demeaning to the seriousness of the offense, because the offender's conduct is more serious than conduct normally constituting the offense.

Conforming changes

The bill amends three Revised Code sections to conform to the redesignation of a division in the murder sentencing statute.⁸

The bill amends the statute that prohibits a person imprisoned for murder from earning credit toward satisfaction of the prison term and setting forth the times at which prisoners serving life sentences become eligible for parole. The amendments conform the statute to the bill's sentencing scheme for murder through the provision of a controlled substance or controlled substance analog.⁹

The bill also amends the statute that sets forth required sentences in certain cases. Under existing law, that statute requires the imposition of an indefinite prison term of 30 years to life for murder of a child under 13 years of age. The bill provides that this requirement applies only when the murder sentencing statute so specifies.¹⁰ The bill, which establishes a penalty of 30 years to life or life without parole for murder of a minor through the provision of a controlled substance or controlled substance analog, does not so specify for that offense.

COMMENT

1. Both existing law and the bill use the terms "years" and "full years" when referring to the time that must be served before a person sentenced to life becomes eligible for parole. At one time, the difference was that a person eligible for parole after serving a specified number of years could earn credit toward satisfaction of the specified minimum term, while a person serving a specified number of *full* years could not.¹¹ Because a person serving a life sentence can no longer earn such credit, and is not eligible for early release on petition of the Director of Rehabilitation and Correction¹² or

⁸ R.C. 2929.148(A)(1)(f), 2971.07(A)(7), and 5120.61(A)(1)(f).

⁹ R.C. 2967.13.

¹⁰ R.C. 2971.03(B)(3)(d).

¹¹ *State v. Banks*, 1990 Ohio App. LEXIS 2928, *appeal dismissed*, 56 Ohio St.3d 712 (1990).

¹² R.C. 2967.19.



for judicial release,¹³ there is no practical difference between "years" and "full years" for purposes of parole eligibility.

2. R.C. 2929.02(B)(2), added by the bill, establishes a penalty for murder of an adult through the provision of a controlled substance or controlled substance analog of 15 years with parole eligibility, *except as otherwise provided in division (B)(3) or (B)(5)*. However, division (B)(3) deals with murder of a person who is under 13. The reference in division (B)(2) to division (B)(3) probably should be eliminated.

HISTORY

ACTION	DATE
Introduced	03-25-14
Reported, H. Judiciary	10-14-14

H0508-RH-130.docx/emr

¹³ R.C. 2929.20.

