



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

H.B. 646

130th General Assembly
(As Introduced)

Reps. Maag, R. Adams. Becker, Henne

BILL SUMMARY

- Creates a new aggravating circumstance in the commission of aggravated murder that the offense was committed purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, and generally requires a sentence of death or life imprisonment without parole to be imposed for that circumstance.
- Increases the time a person convicted of aggravated murder must be imprisoned before becoming eligible for parole, and adds a possible term of life imprisonment with parole eligibility after serving 45 or 55 full years under specified circumstances.

CONTENT AND OPERATION

Penalties for aggravated murder; new aggravating circumstance

The bill generally increases the current aggravated murder penalties of life imprisonment with parole eligibility after serving certain numbers of years, and adds to the possible sentences for that offense life imprisonment with parole eligibility after serving either 45 or 55 full years of imprisonment.

The bill adds a new aggravating circumstance to the current aggravating circumstances that must be specified in the indictment and, if proved beyond a reasonable doubt, would generally require the imposition of the death penalty for aggravated murder. This new aggravating circumstance is that the offense of aggravated murder was committed purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy.¹

¹ R.C. 2929.04(A)(11).

Aggravated murder without aggravating circumstances

If the indictment charging aggravated murder does not contain a specification of an aggravating circumstance and the person is found guilty of the charge of aggravated murder or if the indictment contains a specification of an aggravating circumstance and the person is found guilty of the charge of aggravated murder but not guilty of the specification, the bill requires the trial court generally to impose one of the following sentences on the offender:²

- (1) Life imprisonment without parole (current law);
- (2) Life imprisonment with parole eligibility after serving 25 (raised from 20) years;
- (3) Life imprisonment with parole eligibility after serving 30 (raised from 25) full years;
- (4) Life imprisonment with parole eligibility after serving 35 (raised from 30) full years;
- (5) Life imprisonment with parole eligibility after serving 45 full years (added by the bill);
- (6) Life imprisonment with parole eligibility after serving 55 full years (added by the bill).

Under current law, if the offender also is convicted of a sexual motivation specification and a sexually violent predator specification that are included in the indictment or information, the trial court must impose a sentence of life imprisonment without parole. The bill removes this requirement if the offender raised the matter of age pursuant to current law and was found at trial to have been a minor at the time of the offense.³

Also added by the bill, if the offender is convicted of aggravated murder by purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, the trial court must impose a sentence of death or life imprisonment without parole, unless the offender raised the matter of age and was found at trial to have been a minor at the time of the offense.⁴

² R.C. 2929.03(A) and (C)(1).

³ R.C. 2929.03(A)(2) and (C)(1)(b).

⁴ R.C. 2929.03(A)(3) and (C)(1)(c).



Aggravated murder with aggravating circumstances

If the indictment contains one or more specifications of aggravating circumstances and if the offender is found guilty of both the charge of aggravated murder and one or more of the specifications, the penalty imposed on the offender generally must be one of the following:⁵

- (1) Death or life imprisonment without parole (current law);
- (2) Life imprisonment with parole eligibility after serving 30 (raised from 25) full years;
- (3) Life imprisonment with parole eligibility after serving 35 (raised from 30) full years;
- (4) Life imprisonment with parole eligibility after serving 45 full years (added by the bill);
- (5) Life imprisonment with parole eligibility after serving 55 full years (added by the bill).

Under current law, if the offender also is convicted of a sexual motivation specification and a sexually violent predator specification that are included in the indictment or information, the penalty must be death or life imprisonment without parole. The bill removes this requirement if the offender raised the matter of age and was found at trial to have been a minor at the time of the offense.

Also added by the bill, if one or more specifications of aggravating circumstances that the offender was found guilty of is the new specification that the aggravated murder was committed purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, the penalty must be death or life imprisonment without parole unless the offender raised the matter of age and was found at trial to have been a minor at the time of the offense.⁶ Imposition of a penalty for this new aggravating circumstance must be determined pursuant to current law and by either the panel of three judges that tried the offender upon the offender's waiver of the right to trial by jury, or by the trial jury and the trial judge if the offender was tried by jury.⁷

⁵ R.C. 2929.03(C)(2)(a).

⁶ R.C. 2929.03(C)(2)(a)(iii) and (iv).

⁷ R.C. 2929.03(C)(2)(b).



Aggravating circumstances not found to outweigh mitigating factors

Recommendation by jury

If, upon consideration of the relevant evidence and other materials, the jury does not unanimously find by proof beyond a reasonable doubt that the aggravating circumstances outweigh the mitigating factors, the jury generally must recommend that the offender be sentenced to one of the following:⁸

- (1) Life imprisonment without parole (current law);
- (2) Life imprisonment with parole eligibility after serving 30 (raised from 25) full years;
- (3) Life imprisonment with parole eligibility after serving 35 (raised from 30) full years;
- (4) Life imprisonment with parole eligibility after serving 45 full years (added by the bill);
- (5) Life imprisonment with parole eligibility after serving 55 full years (added by the bill).

Also added by the bill, if one or more of the aggravating circumstances that the offender was found guilty of is the new specification that the aggravated murder was committed purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, the jury must recommend that the offender be sentenced to life imprisonment without parole.

The court must impose the sentence recommended by the jury upon the offender if the jury recommends that the offender be sentenced to one of the periods described in paragraphs (1) through (5) above or to an indefinite term consisting of a minimum term of 30 years and a maximum term of life imprisonment to be imposed pursuant to current law.⁹

Finding by court or panel

If upon consideration of the relevant evidence and other materials, and if after receiving the jury's recommendation that the sentence of death be imposed, the court or the panel of judges does not find, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the

⁸ R.C. 2929.03(D)(2).

⁹ R.C. 2929.03(D)(2).



mitigating factors, the court or the panel generally must impose one of the sentences described in paragraphs (1) to (5) above under "**Recommendation by jury**" or a sentence of life imprisonment without parole if one or more of the aggravating circumstances that the offender was found guilty of is the new specification that the aggravated murder was committed purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy.¹⁰

Offender under 18 years of age

If the offender raised the matter of age at trial, was convicted of aggravated murder and one or more specifications of an aggravating circumstance, and was found at trial to have been a minor at the time of the offense, the court or the panel of judges must not impose a sentence of death. Instead, the court or panel generally must impose one of the sentences described in paragraphs (1) to (5) above under "**Recommendation by jury.**"¹¹

The bill repeals a provision of existing law that requires, if the offender also is convicted of a sexual motivation specification and a sexually violent predator specification that are included in the indictment or information that charged the aggravated murder, a sentence of life imprisonment without parole to be imposed.¹²

Conforming changes

The bill makes conforming changes in current law pertaining to resentencing hearings, definite prison terms, sexually violent predator specification, sentencing for sexually violent predator specification, application of sexually violent predator sentencing to searches without a warrant, and risk assessment reports for violent offenders.¹³

HISTORY

ACTION	DATE
Introduced	10-22-14

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¹⁰ R.C. 2929.03(D)(3).

¹¹ R.C. 2929.03(E).

¹² R.C. 2929.03(E)(2) (repealed).

¹³ R.C. 2929.06(A) and (B), 2929.14(E)(5), 2941.148(A)(1)(e), 2971.03(B)(3)(c), 2971.07(A)(6), and 5120.61(A)(1)(e).

