



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

Am. H.B. 57

131st General Assembly
(As Passed by the House)

Reps. Maag, Becker, Zeltwanger, Henne, Anielski, Blessing, Boose, Brown, Buchy, Butler, Cera, Conditt, Duffey, Ginter, Green, Grossman, Hambley, Hayes, T. Johnson, Koehler, Kunze, Manning, McClain, M. O'Brien, S. O'Brien, Retherford, Rogers, Schuring, R. Smith, Terhar, Young, Rosenberger

BILL SUMMARY

- Creates a new capital punishment aggravating circumstance, 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.
- Retains some of the current durations 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 35, 40, 45, 50, or 55 full years under specified circumstances.
- Specifies that its provisions are to be known as "Justin's Law."

CONTENT AND OPERATION

Penalties for aggravated murder; new aggravating circumstance

The bill generally retains the current aggravated murder penalties of life imprisonment with parole eligibility after serving certain numbers of years or no parole eligibility, when death is not imposed, and adds to the possible sentences for that offense life imprisonment with parole eligibility after serving 35, 40, 45, 50, or 55 full years of imprisonment. The circumstances in which the new sentences may be imposed are described in detail below.

The bill adds a new aggravating circumstance to the current aggravating circumstances that must be specified in an aggravated murder indictment and proved in order for a person to be eligible for a sentence of death. 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 There currently are ten aggravating circumstances, including that: the offense was committed for hire, to escape detection or punishment for another crime, while committing or fleeing after committing another specified serious crime, or to kill a witness to another crime; the offender was a repeat murderer; or the victim was a law enforcement officer in specified circumstances, etc.²

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:³

- Life imprisonment without parole (current law); or
- Life imprisonment with parole eligibility after serving 20 years, 25 full years, or 30 full years (current law); or
- Life imprisonment with parole eligibility after serving 35, 40, 45, 50, or 55 full years (added by the bill); or
- An indefinite term of 30 years to life under the Sexually Violent Predator Sentencing Law (the SVP Law) if the victim was under age 13, the offender also is convicted of a sexual motivation specification, and life imprisonment without parole is not imposed (current law).

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 (see **COMMENT**), unchanged by the bill, and was found at trial to have been a minor at the time of the offense.⁴

¹ R.C. 2929.04(A)(11).

² R.C. 2929.04(A)(1) to (10).

³ R.C. 2929.03(A)(1) and (C)(1)(a).

⁴ R.C. 2929.03(A)(2) and (C)(1)(b).



Aggravated murder with aggravating circumstances proved

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

- Death or life imprisonment without parole (current law); or
- Life imprisonment with parole eligibility after serving 20 full years (added by the bill); life imprisonment with parole eligibility after serving 25 or 30 full years (current law); or life imprisonment with parole eligibility after serving 35, 40, 45, 50, or 55 full years (added by the bill); or
- An indefinite term of 30 years to life under the SVP Law if the victim was under age 13, the offender also is convicted of a sexual motivation specification, and life imprisonment without parole is not imposed (current law).

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 pursuant to current law, unchanged by the bill, and was found at trial to have been a minor at the time of the offense.⁶

Aggravating circumstances proved but not found to outweigh mitigating factors

If aggravating circumstances are proved the jury or three-judge panel as trier of fact conducts a balancing test to determine whether the offender will be sentenced to death or to one of the sentences of life imprisonment.

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 life imprisonment without parole or life imprisonment with parole eligibility (the bill removes the number of years, 25 or 30 full years of

⁵ R.C. 2929.03(C)(2)(a)(i) and (ii).

⁶ R.C. 2929.03(C)(2)(a)(iii).



serving, before being eligible for parole under current law), or in certain circumstances an indefinite term of 30 years to life under the SVP Law.⁷ A different finding is required for the jury to recommend a death sentence.

Under the bill, the court must impose the sentence recommended by the jury upon the offender if the jury recommends that the offender be sentenced to life imprisonment without parole or to an indefinite term of 30 years to life under the SVP Law.⁸ If the jury recommends that the offender be sentenced to life imprisonment with parole eligibility, upon consideration of relevant evidence and other materials, the court must impose a sentence of life imprisonment with parole eligibility after serving 20, 25, 30, 35, 40, 45, 50, or 55 full years.⁹

Finding by court or panel

If upon consideration of the relevant evidence and other materials the panel of judges does not unanimously find, or if after receiving the jury's recommendation that the sentence of death be imposed, the court does not find, by proof beyond a reasonable doubt, that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors, the court or the panel generally must impose one of the life sentences described above under "**Recommendation by jury.**"¹⁰ A different finding is required for the court or panel to impose a death sentence.

Offender under 18 years of age

If the offender raised the matter of age at trial pursuant to current law, 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 may not impose a sentence of death. Instead, the court or panel generally must impose one of the sentences described 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

⁷ R.C. 2929.03(D)(2)(a) and (b).

⁸ R.C. 2929.03(D)(2).

⁹ R.C. 2929.03(D)(2).

¹⁰ R.C. 2929.03(D)(3)(a).

¹¹ R.C. 2929.03(E).



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

Justin's Law

The bill specifies that its provisions are to be known as "Justin's Law."¹³

Conforming changes

The bill makes conforming changes in current law pertaining to sentencing of aggravated murder offenders under the SVP Law and risk assessment reports for those offenders.¹⁴

COMMENT

The existing provision referred to in the bill regarding an aggravated murder offender raising the matter of age applies only when the offender is charged with one or more specifications of an aggravating circumstance.¹⁵

HISTORY

ACTION	DATE
Introduced	02-11-15
Reported, H. Judiciary	06-17-15
Passed House (83-11)	04-12-16

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¹² R.C. 2929.03(E)(2), repealed.

¹³ Section 3.

¹⁴ R.C. 2929.14(E)(5), 2941.148(A)(1)(e), 2971.03(B)(3)(c), 2971.07(A)(6), and 5120.61(A)(1)(e).

¹⁵ R.C. 2929.023, not in the bill.

