



# Ohio Legislative Service Commission

## Bill Analysis

Jeff Hobday

### **Am. Sub. S.B. 97** 131st General Assembly (As Reported by H. Judiciary)

**Sens.** Hughes and LaRose, Eklund, Patton, Bacon, Balderson, Burke, Coley, Faber, Gardner, Gentile, Hite, Hottinger, Obhof, Peterson, Thomas, Uecker

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## **BILL SUMMARY**

- Increases by 50% the mandatory prison term required for a firearm specification, when an offender who has been convicted of a felony and the specification previously has been convicted of a firearm specification.
- In a provision regarding commitment to the Department of Youth Services of a child who is adjudicated a delinquent child and is an accomplice regarding a specified type of specification, corrects the reference to the types of specifications to which the provision applies.
- Defines "violent career criminals" and prohibits them from knowingly using any firearm or dangerous ordnance.
- Requires a mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years for a "violent career criminal" convicted of committing a violent felony offense while armed with a firearm.
- Specifies that the existing firearm disability relief mechanism does not apply to a person who:
  - (1) Has been convicted of a violation of the offense of unlawful use of a weapon by a violent career criminal; or
  - (2) Two or more times, has been convicted of a felony and either a firearm specification or the violent career criminal/firearm specification.

- Specifies that a previous delinquent child or juvenile traffic offender adjudication is not a "conviction" for purposes of determining under the bill's provisions whether the person:
  - (1) Is a "violent career criminal";
  - (2) Has committed the offense of unlawful use of a weapon by a violent career criminal or should be sentenced for that offense; or
  - (3) Should be sentenced as a violent career criminal who had a firearm and displayed, brandished, or indicated that the person possessed the firearm, or used the firearm to facilitate the offense while committing a violent felony offense.
- Provides certain prisoners credit for time spent in custody before delivery to prison in determining eligibility to apply for judicial release.
- Specifies that no presentence investigation report is required for shock probation to be granted to an offender convicted of an offense committed before July 1, 1996.
- Modifies the offense of aggravated murder to prohibit a person from purposely causing the death of another as part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons.

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## **CONTENT AND OPERATION**

### **Background – felony sentencing**

Under the Felony Sentencing Law, subject to specified exceptions and unless a specific sanction is required or precluded, a court sentencing an offender for a felony generally has discretion to determine the most effective way to comply with specified purposes and principles of sentencing and may impose any sanctions provided in that Law. For certain felonies, and for felonies committed in certain specified circumstances, a mandatory prison term is required. If in sentencing the offender, the court is not required to impose a mandatory prison term, a sentence of death, or life imprisonment, it may impose a sentence consisting of one or more community control sanctions, the cumulative duration of which may not exceed five years.<sup>1</sup>

### **Mandatory prison term for felony, with a firearms specification**

The bill increases by 50% the mandatory prison term required for a firearm specification, when the offender convicted of the felony and the specification previously was convicted of any of the five existing firearms specifications or any of five related new ones added by the bill. It enacts new firearms specifications that are used with respect to the increased prison term provisions, and continues existing provisions that specify circumstances in which the mandatory firearms specification prison terms do not apply.

Currently, if a person is convicted of a felony, other than a few exempted felonies, and the person also is convicted of one of five types of firearms specifications, the sentencing court must impose a mandatory prison term on the offender for the specification. The mandatory prison term either is one, three, five, six, or seven years, depending upon the type of the specification. The term cannot be reduced pursuant to a judicial release or pursuant to any provision of R.C. Chapter 2967. or 5120.<sup>2</sup>

### **Having a firearm while committing the felony**

Under the bill, if an offender convicted of a felony also is convicted of a specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and that the

<sup>1</sup> R.C. 2929.11 to 2929.18, not in the bill except for R.C. 2929.13 and 2929.14.

<sup>2</sup> R.C. 2929.14(B)(1)(a) to (c) and (f).



offender previously was convicted of a firearms specification, the court must impose a prison term of 18 months. Imposition of the 18-month mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearms specification provision relative to the same felony.<sup>3</sup>

This provision increases by 50% the one-year mandatory prison term currently required for an offender convicted of a felony who also is convicted of this type of firearms specification, but note that the existing specification does not include the bill's additional element requiring that the offender previously was convicted of a firearms specification. The bill retains this provision without substantive change. Imposition of the one-year mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearms specification provision relative to the same felony.<sup>4</sup>

### **Displaying, or indicating possession of the firearm while committing the felony**

Under the bill, if an offender convicted of a felony also is convicted of a specification that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying, brandishing, or indicating possession of the firearm, or using the firearm to facilitate the offense and that the offender previously was convicted of a firearms specification, the court must impose a mandatory prison term of 54 months. Imposition of the 54-month mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearms specification provision relative to the same felony.<sup>5</sup>

This provision increases by 50% the three-year mandatory prison term currently required for an offender convicted of a felony who also is convicted of this type of firearms specification, but note that the existing specification does not include the bill's additional element requiring that the offender previously was convicted of a firearms specification. The bill retains this provision without substantive change. Imposition of the three-year mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearms specification provision relative to the same felony.<sup>6</sup>

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<sup>3</sup> R.C. 2929.14(B)(1)(a)(vi) and 2941.141(D) and (E).

<sup>4</sup> R.C. 2929.14(B)(1)(a)(iii) and 2941.141(A) and (B).

<sup>5</sup> R.C. 2929.14(B)(1)(a)(v) and 2941.145(D) and (E).

<sup>6</sup> R.C. 2929.14(B)(1)(a)(ii) and 2941.145(A) and (B).

## **Committing a specified felony by discharging a firearm from a motor vehicle**

Under the bill, if an offender convicted of the offense of "improperly discharging a firearm at or into a habitation, in a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function" (R.C. 2923.161) or a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of a specification that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home and that the offender previously was convicted of any of a firearms specification, after imposing a prison term for the base offense, must impose an additional prison term of 90 months.<sup>7</sup>

This provision increases by 50% the five-year mandatory prison term currently required for an offender convicted of any of the specified felony offenses who also is convicted of this type of firearms specification, but note that the existing specification does not include the bill's additional element requiring that the offender previously was convicted of a firearms specification. The bill retains this provision without substantive change.<sup>8</sup>

## **Having an automatic firearm or a firearm with a suppressor while committing the felony**

Under the bill, if an offender convicted of a felony also is convicted of a specification that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense and that the offender previously was convicted of a firearms specification, the court must impose a mandatory prison term of nine years. Imposition of the nine-year mandatory term is precluded if the court imposes a different mandatory prison term on the offender under another firearms specification provision relative to the same felony.<sup>9</sup>

This provision increases by 50% the six-year mandatory prison term currently required for an offender convicted of a felony who also is convicted of this type of firearms specification, but note that the existing specification does not include the bill's additional element requiring that the offender previously was convicted of a firearms specification. The bill retains this provision without substantive change. Imposition of

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<sup>7</sup> R.C. 2929.14(B)(1)(c)(ii) and 2941.146(C).

<sup>8</sup> R.C. 2929.14(B)(1)(c)(i) and 2941.146(A).

<sup>9</sup> R.C. 2929.14(B)(1)(a)(iv) and 2941.144(D) and (E).

the six-year mandatory minimum is precluded if the court imposes a different mandatory prison term on the offender under another firearms specification provision relative to the same felony.<sup>10</sup>

### **Causing or attempting to cause the death of or injury to another by discharging a firearm at a peace officer**

Under the bill, if an offender is convicted of a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of a specification that charges the offender with committing the offense by discharging a firearm at a "peace officer" or a "corrections officer" (defined terms) and that the offender previously was convicted of a firearms specification, the court, after imposing a prison term for the base offense, must impose an additional prison term of 126 months.<sup>11</sup>

This provision increases by 50% the seven-year mandatory prison term currently required for an offender convicted of any of the specified felonies who also is convicted of this type of firearms specifications, but note that the existing specification does not include the bill's additional element requiring that the offender previously was convicted of any of the firearms specifications. The bill retains this provision without substantive change.<sup>12</sup>

### **Exemptions from mandatory firearms specification prison terms**

A provision of existing law, unchanged by the bill, provides exceptions to the mandatory firearms specification prison terms described above, except for the one described above that relates to discharging a firearm at a peace officer or corrections officer. The exceptions will apply to the bill's expanded mandatory firearms specification prison terms for all of the other specifications described above.<sup>13</sup>

The exceptions specify that a court may not impose any of the mandatory firearms specification prison terms mentioned in the preceding paragraph upon an offender convicted of "carrying concealed weapons"; weapons offenses related to a courthouse, a school safety zone, or liquor permit premises (this exception apparently

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<sup>10</sup> R.C. 2929.14(B)(1)(a)(i) and 2941.144(A) and (B).

<sup>11</sup> R.C. 2929.14(B)(1)(f)(ii) and 2941.1412(B).

<sup>12</sup> R.C. 2929.14(B)(1)(f)(i) and 2941.1412(A).

<sup>13</sup> R.C. 2929.14(B)(1)(e).



does not apply to the specification provisions regarding discharging a firearm from a motor vehicle); or, in most cases, "having weapons while under disability."<sup>14</sup>

### **Special provisions regarding multiple felony convictions**

Several provisions of existing law, unchanged by the bill and generally applicable to the bill's mandatory firearms specification prison terms described above, address the application of the mandatory firearms specification prison terms to an offender convicted of multiple felonies or multiple specifications.<sup>15</sup>

### **Felony delinquent child adjudication when child guilty of a firearms or aggravated vehicular homicide specification**

Under continuing law, if a child is adjudicated a delinquent child for an act that would be a felony if committed by an adult, other than "carrying concealed weapons," and the juvenile court determines that the child, if an adult, would be guilty of a firearms specification or a specified aggravated vehicular homicide specification, subject to a separate provision regarding a "body armor" specification, the court may or must, depending upon the type of the specification, commit the child to DYS for the specification. The period of the commitment is either a term of up to one year, a term of at least one year and not more than three years, or a term of at least one year and not more five years, depending upon the type of the specification.<sup>16</sup>

Existing law also provides that the specification provisions described in the preceding paragraph apply to a child who is an accomplice regarding an existing "firearm" specification of the type set forth in R.C. 2941.1412, 2941.1414, or 2941.1415 to the same extent the specification would apply to an adult accomplice in a criminal proceeding. R.C. 2941.1414 and 2941.1415 are not "firearms" specifications – rather, they are specifications that pertain to the commission of aggravated vehicular homicide in specified circumstances. The bill removes the reference to R.C. 2941.1412, 2941.1414, and 2941.1415 specifications as "firearms" specifications.<sup>17</sup>

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<sup>14</sup> R.C. 2929.14(B)(1)(e).

<sup>15</sup> R.C. 2929.14(B)(1)(b), (c)(iii), (f)(iii), and (g).

<sup>16</sup> R.C. 2152.17(A) and 2941.141(D) and (F), 2941.144(A) and (C), 2944.144(A) and (C), 2944.145(A) and (C), 2941.146(A) and (B), 2941.1414(A) and (B), and 2941.1415(A) and (B).

<sup>17</sup> R.C. 2152.17(B).

## **Violent career criminal offense and mandatory prison term**

### **Unlawful use of a weapon by a violent career criminal**

The bill prohibits a "violent career criminal" from knowingly using any "firearm" or "dangerous ordnance" (see "**Violent career criminal definitions**," below). A violation of this prohibition is the offense of "unlawful use of a weapon by a violent career criminal," a first degree felony, and, notwithstanding the prison terms generally authorized under the Felony Sentencing Law for a first degree felony, the court must impose a mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years.<sup>18</sup> A court may not impose more than one sentence under this provision and the mandatory prison term provision described in the next paragraph for acts committed as part of the same act or transaction.<sup>19</sup>

### **Mandatory prison term for violent felony offense conviction with a violent career criminal/firearm possession specification**

The bill requires a court that is sentencing an offender for a "violent felony offense" to impose an additional mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years on the offender if the offender also is convicted of a specification enacted by the bill that charges that the offender is a "violent career criminal" and had a firearm on or about the offender's person or under the offender's control and displayed, brandished, or indicated possession of the firearm, or used the firearm to facilitate the offense while committing the presently charged violent felony offense. The offender must serve this prison term consecutively to and prior to the prison term imposed for the underlying offense, and it cannot be reduced pursuant to a judicial release or pursuant to any provision of R.C. Chapter 2967. or 5120. A court may not impose more than one sentence under this provision and an existing "repeat violent offender sentencing mechanism" (see "**Background – existing repeat violent offender law**," below) for acts committed as part of the same act or transaction. A court may not impose more than one sentence under this provision and the offense of "unlawful use of a weapon by a violent career criminal" created by the bill, as described above, for acts committed as part of the same act or transaction.<sup>20</sup>

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<sup>18</sup> R.C. 2923.132(B) and (C) and 2929.13(F)(4).

<sup>19</sup> R.C. 2941.1424(B).

<sup>20</sup> R.C. 2929.14(A) and (K); also R.C. 2929.13(F)(19) and 2941.1424.



## **Violent career criminal definitions**

As used in the offense of "unlawful use of a weapon by a violent career criminal" and the violent career criminal mandatory prison term provisions described above:<sup>21</sup>

**"Violent career criminal"** means a person who within the preceding eight years, subject to the extension described below, has been convicted of two or more "violent felony offenses" (see below) that are separated by intervening sentences and are not so closely related to each other and connected in time and place that they constitute a course of criminal conduct. Except as otherwise described in this paragraph, the eight-year period described in this definition must be extended by a period of time equal to any period of time during which the person, within that eight-year period, was confined as a result of having been accused of an offense, having been convicted of an offense, or having been accused of violating or found to have violated any "community control sanction," "post-release control sanction," or term or condition of "supervised release" (the terms in quotation marks have the meanings set forth in specified existing Criminal Code provisions). The extension does not apply to any period of time (1) during which a person is confined as a result of being accused of an offense if the person is acquitted of the charges or the charges are dismissed in final disposition of the case or (2) during which a person is confined as a result of having been accused of violating any sanction, term, or condition of control or release if the person subsequently is not found to have violated that sanction, term, or condition.

**"Violent felony offense"** means any of the following:

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, kidnapping, abduction, aggravated arson, making a terroristic threat, aggravated robbery, robbery, or aggravated burglary;

(2) Burglary under R.C. 2911.12(A)(1) or (2), the elements of which include prohibiting trespass in an occupied structure when someone is likely to be present, with purpose to commit a criminal offense;

(3) Felony rape, sexual battery, unlawful sexual conduct with a minor, or gross sexual imposition;

(4) Felony terrorism or third degree felony domestic violence (i.e., when the offender has two or more prior convictions of that offense or other specified offenses);

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<sup>21</sup> R.C. 2923.132(A), 2929.14(K), and 2941.1424(C).

(5) A felony violation of any existing or former ordinance or law of Ohio, another state, or the United States that is or was substantially equivalent to any offense listed in paragraphs (1) to (5) under this definition;

(6) A conspiracy or attempt to commit, or complicity in committing, any offense listed in paragraphs (1) to (5) under this definition, if the conspiracy, attempt, or complicity is a first or second degree felony.

**"Dangerous ordnance"** and **"firearm"** have the same meanings as in the Weapon Control Law.

### **Firearm disability relief mechanism inapplicability**

The bill specifies that the existing mechanism for obtaining relief from a firearm disability does not apply to a person who has been convicted of the offense of "unlawful use of a weapon by a violent career criminal" or to a person who, two or more times, has been convicted of a felony and any firearms specification, or the violent career criminal/firearm specification.<sup>22</sup>

Under the existing firearm disability relief mechanism, a person who is prohibited from acquiring, having, carrying, or using firearms may apply to the court of common pleas in the county in which the person resides for relief from the prohibition. Upon the filing of an application, the court follows specified procedures and, if it makes specified findings at a hearing, it may grant relief from the disability. The relief restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, applies only with respect to the disability recited in the application and to firearms lawfully acquired or possessed, etc., may be revoked by the court at any time for good cause shown, and is automatically void upon the occurrence of any of a list of other specified events.<sup>23</sup>

The existing firearm disability law prohibits a person who is in any of five specified categories of persons from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance, unless the person is relieved from the disability under the mechanism. A violation of the prohibition is the offense of "having weapons while under disability," a third degree felony. The categories of persons that are subject to the prohibition include persons who are under indictment for, have been convicted

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<sup>22</sup> R.C. 2923.14(A)(2).

<sup>23</sup> R.C. 2923.14(B) to (G).

of, or have been adjudicated a delinquent child for committing, a felony "offense of violence" (a defined term) or a felony drug abuse offense of a specified nature.<sup>24</sup>

### **Delinquent child or juvenile traffic offender adjudication not counting as a conviction**

The bill enacts a new exception to a provision that specifies that a delinquent child or juvenile traffic offender adjudication generally counts as "conviction" if the person later is facing criminal charges.

Currently, if a person who is alleged to have committed an offense previously has been adjudicated a delinquent child or juvenile traffic offender for violating a law or ordinance, subject to one exception, the adjudication is a "conviction" for that violation for purposes of determining the offense with which the person should be charged and, if the person is convicted of an offense, the sentence to be imposed upon the person relative to the conviction. But a previous adjudication of either type is not a "conviction" for a violation of the involved law or ordinance for any purpose under the existing repeat violent offender sentencing mechanism (see "**Background – repeat violent offender law**," below).<sup>25</sup>

Under the bill, a previous delinquent child or juvenile traffic offender adjudication also is not a "conviction" for purposes of the provisions of the bill described above with respect to determining whether the person: is a violent career criminal; has committed the offense of unlawful use of a weapon by a violent career criminal or should be sentenced for that offense; or should be sentenced as a violent career criminal who had a firearm on or about the person's person or under the person's control and displayed, brandished, or indicated possession of the firearm, or used the firearm to facilitate the offense while committing a violent felony offense.<sup>26</sup>

### **Judicial release**

The bill modifies the period of time that an "eligible offender" sentenced to a prison term of at least five years but not more than ten years must serve under the sentence in order to be eligible to apply to the sentencing court for judicial release. This change also affects the period of time that an "eligible offender" sentenced to a prison term of more than ten years must serve under the sentence in order to be eligible to apply. An "eligible defender" is a person serving a stated prison term for a felony that

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<sup>24</sup> R.C. 2923.13, not in the bill.

<sup>25</sup> R.C. 2901.08.

<sup>26</sup> R.C. 2901.08(B)(2).



includes one or more nonmandatory prison terms, subject to exceptions for several specified felonies and types of felonies. Under the judicial release mechanism, when an eligible offender applies to the sentencing court, the court follows a specified procedure and, if it makes specified findings at a hearing, it grants the motion, orders the offender's release, places the offender under a community control sanction and conditions and under probation-like supervision, and reserves the right to reimpose the sentence it reduced if the offender violates the sanction.<sup>27</sup>

Under the bill, an eligible offender whose aggregated nonmandatory prison term or terms is five years may file the motion not earlier than the date on which the offender has served four years of the offender's stated prison term (currently, not earlier than four years after the eligible offender is delivered to a prison) or, as under existing law, if the prison term includes a mandatory prison term or terms, not earlier than four years after the expiration of all mandatory prison terms. And an eligible whose aggregated nonmandatory prison term or terms is more than five years but not more than ten years may file the motion not earlier than the date on which the offender has served five years of the offender's stated prison term (currently, not earlier than five years after the eligible offender is delivered to a prison) or, as under existing law, if the prison term includes a mandatory prison term or terms, not earlier than five years after the expiration of all mandatory prison terms.<sup>28</sup>

The changes described above also affect the period of time that an eligible offender sentenced to a prison term of more than ten years must serve under the sentence in order to be eligible to apply. Under existing law, unchanged by the bill but affected by the change described above, an eligible offender whose aggregated nonmandatory prison term or terms is more than ten years may file the motion not earlier than the later of the date on which the offender has served one-half of the offender's stated prison term or the date specified for eligible offenders whose aggregated nonmandatory prison term or terms is more than five years but not more than ten years.<sup>29</sup>

The bill does not change or affect the existing periods of time that an "eligible offender" sentenced to a prison term of less than five years must serve under the sentence in order to be eligible to apply to the sentencing court for judicial release.<sup>30</sup>

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<sup>27</sup> R.C. 2929.20.

<sup>28</sup> R.C. 2929.20(C)(3) and (4).

<sup>29</sup> R.C. 2929.20(C)(5).

<sup>30</sup> R.C. 2929.20(C)(1) and (2).

## "Old law" prisoners and shock probation

The bill specifies that a presentence investigation report is not required for shock probation to be granted, under the provision described in the next paragraph, to a person who was convicted of an offense that was committed before July 1, 1996, and who otherwise satisfies the eligibility criteria for shock probation under that section as it existed immediately prior to July 1, 1996.<sup>31</sup>

Shock probation generally was eliminated as of July 1, 1996,<sup>32</sup> but an existing provision specifies that, notwithstanding the time limitation for filing a motion under the former statute that governed shock probation, an offender whose offense was committed before July 1, 1996, and who otherwise satisfies the eligibility criteria for shock probation under that former statute may apply to the offender's sentencing court for shock probation under that former statute. Not more than one motion may be filed by an offender under this provision.<sup>33</sup>

### Background – existing repeat violent offender law

Existing law, unchanged by the bill, provides a "repeat violent offender sentencing mechanism." Under the mechanism, depending upon specified circumstances, a court sentencing an offender for a felony may or must impose, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if the offender is convicted of a "repeat violent offender" specification and the offense for which sentence is being imposed is aggravated murder when death or life without parole is not imposed, murder, terrorism or a first degree felony offense of violence when life without parole is not imposed, or a second degree felony offense of violence that involved an attempt or threat to cause, or that resulted in, serious physical harm to a person.<sup>34</sup>

A sentence imposed under this provision may not be reduced pursuant to a judicial release or pursuant to any provision of R.C. Chapter 2967. or 5120., and must be served consecutively to and prior to the prison term imposed for the underlying offense.

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<sup>31</sup> R.C. 2929.201.

<sup>32</sup> By Am. Sub. S.B. 2 of the 121st General Assembly.

<sup>33</sup> R.C. 2929.201.

<sup>34</sup> R.C. 2929.14(B)(2); definition of "repeat violent offender" in R.C. 2929.01(CC).

As used in the mechanism, "repeat violent offender" means a person who: (1) is being sentenced for committing or for complicity in committing: (a) aggravated murder, murder, a first or second degree felony offense of violence, or an attempt to commit any of these offenses if the attempt is a first or second degree felony, or (b) an offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to an offense described in clause (1)(a), and (2) previously was convicted of an offense described in clause (1)(a) or (b).

## **Aggravated murder**

The bill adds a prohibition to the offense of aggravated murder to prohibit a person from purposely causing the death of another as part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons. Under existing law, unchanged by the bill, aggravated murder is a capital offense, punishable by death or life imprisonment.<sup>35</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	03-03-15
Reported, S. Criminal Justice	04-22-15
Passed Senate (30-3)	04-29-15
Reported, H. Judiciary	05-18-16

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<sup>35</sup> R.C. 2903.01(F) and 2929.02(A), not in the bill.

