



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Dennis M. Papp

### **S.B. 94**

132nd General Assembly  
(As Introduced)

**Sens.** Brown, Thomas, Yuko, Skindell, Williams, Tavares

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### **BILL SUMMARY**

- Abolishes the death penalty in Ohio.
- Requires a trial court that sentenced an offender to death prior to the bill's effective date to conduct a hearing to resentence the offender and to sentence the offender to life imprisonment without parole.
- Requires, generally, that a person who is convicted of aggravated murder must be sentenced to one of four options:
  - Life imprisonment with parole eligibility after serving 20 full years of imprisonment;
  - Life imprisonment with parole eligibility after serving 25 full years of imprisonment;
  - Life imprisonment with parole eligibility after serving 30 full years of imprisonment;
  - Life imprisonment without parole.
- Requires that a person who is convicted of aggravated murder of a victim under age 13 and who also is convicted of a sexual motivation specification must be sentenced to an indefinite prison term of 30 years to life under the Sexually Violent Predator Sentencing Law.
- Requires that a person who is convicted of aggravated murder and also is convicted of a sexual motivation specification and a sexually violent predator specification must be sentenced to a term of life imprisonment without parole under the Sexually Violent Predator Sentencing Law.

- Increases the amount of the fine that may be imposed for aggravated murder from \$15,000 to \$25,000.
- Requires that a person who has been convicted of terrorism when the most serious offense comprising the terrorism is aggravated murder must be sentenced to life imprisonment without parole.
- Specifies that an offender whose sentence of death was set aside, nullified, or vacated pursuant to an existing provision but who was not resentenced under that provision as of the bill's effective date must be resentenced in accordance with that provision as it existed immediately before the bill's effective date.
- Specifies that an offender who was sentenced to death before the bill's effective date will have the same right to post-conviction DNA testing as the offender had under the DNA testing provisions as they existed immediately before the bill's effective date.
- Requires that all reports and payments relating to capital cases that were required to be made under the state's Public Defender Law before the bill's effective date must be made for the current calendar or fiscal year, as applicable, in accordance with the law as it existed immediately before the bill's effective date.
- Declares an emergency.

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## CONTENT AND OPERATION

### Abolishment of the death penalty in Ohio

#### Abolishment and resentencing of previously sentenced offender

The bill abolishes the death penalty in Ohio. A trial court that sentenced an offender to death prior to the bill's effective date must conduct a hearing to resentence the offender. At the resentencing hearing, the court must impose upon the offender a sentence of life imprisonment without parole.<sup>1</sup> Currently, as described below, Ohio law allows the death penalty only in limited circumstances for the offense of aggravated murder or the offense of terrorism.

#### New sentencing for aggravated murder and terrorism

##### Aggravated murder – in general

Except as described below in "**Aggravated murder – if also convicted of sexual motivation specification and victim under age 13**," the bill requires that a person who is convicted of aggravated murder (see "**Offenses of aggravated murder and terrorism**," below, for elements of the offense of aggravated murder) must be sentenced to one of four options:<sup>2</sup>

(1) Life imprisonment with parole eligibility after serving 20 full years of imprisonment;

(2) Life imprisonment with parole eligibility after serving 25 full years of imprisonment;

(3) Life imprisonment with parole eligibility after serving 30 full years of imprisonment;

(4) Life imprisonment without parole.

##### **Aggravated murder – if also convicted of sexual motivation specification and victim under age 13**

Under the bill, if a person is convicted of aggravated murder, the victim of the offense was under age 13, and the offender also is convicted of a "sexual motivation specification" (a defined term) that was included in the document charging the offense, except as described in the next sentence, the court must impose an indefinite prison

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<sup>1</sup> R.C. 2929.02(G).

<sup>2</sup> R.C. 2929.02(A).



term of 30 years to life under the Sexually Violent Predator Sentencing Law. If a person is convicted of aggravated murder and also is convicted of a sexual motivation specification and a "sexually violent predator specification" (a defined term) that were included in the document charging the murder, the court must impose upon the offender a term of life imprisonment without parole under the Sexually Violent Predator Sentencing Law.<sup>3</sup>

### **Terrorism**

The bill requires that a person who is convicted of terrorism when the most serious act of terrorism is aggravated murder (see "**Offenses of aggravated murder and terrorism**," below, for elements of the offense of terrorism) must be sentenced to life imprisonment without parole.<sup>4</sup>

### **Resentencing of offenders whose sentences were previously set aside, nullified, or vacated**

Under the bill, an offender whose sentence of death has been set aside, nullified, or vacated pursuant to the current statute that pertains to the setting aside, nullification, or vacation of a death sentence and resentencing of the offender,<sup>5</sup> as that statute existed immediately before the bill's effective date, but who has not been resentenced under that statute as of the bill's effective date, must be resentenced in accordance with that section as it existed immediately before the bill's effective date.<sup>6</sup>

### **Right to post-conviction DNA testing**

An offender who was sentenced to death before the bill's effective date will have the same right to post-conviction DNA testing as the offender had under the DNA testing provisions of the Revised Code as they existed immediately before the bill's effective date or as they subsequently may be amended.<sup>7</sup>

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<sup>3</sup> R.C. 2929.02(C), cross-referenced at R.C. 2929.14(E)(5) and (6), 2941.148(A)(1)(e) and (f), 2971.03(B)(3)(c), 2971.07(A)(6) and (7), and 5120.61(A)(1)(e) and (f).

<sup>4</sup> R.C. 2909.24.

<sup>5</sup> R.C. 2929.06, not in (but repealed by) the bill in Section 2.

<sup>6</sup> Section 3, division (A).

<sup>7</sup> Section 3, division (B).



## **Reimbursements for counties' costs and expenses of conducting defense in capital cases**

Under current law, the State Public Defender must reimburse 50% of all costs and expenses of conducting the defense in capital cases to each county.<sup>8</sup> The total amount of money paid to all counties in any fiscal year pursuant to that requirement for the reimbursement of a percentage of the counties' costs and expenses of conducting the defense in capital cases must not exceed the total amount appropriated for that fiscal year by the General Assembly for the reimbursement of the counties for conducting the defense in capital cases. If the amount appropriated by the General Assembly in any fiscal year is insufficient to pay 50% of the counties' total costs and expenses of conducting the defense in capital cases in the fiscal year, the amount of money paid in that fiscal year to each county for the fiscal year must be reduced proportionately so that each county is paid an equal percentage of its costs and expenses of conducting the defense in capital cases in the fiscal year.<sup>9</sup>

The bill repeals the provisions that pertain to reimbursement of capital cases.<sup>10</sup> Under the bill, all reports and payments relating to capital cases that were required to be made under the provisions described above as those provisions existed immediately before the bill's effective date must be made for the current calendar or fiscal year, as applicable, in accordance with those provisions as they existed immediately before the bill's effective date.<sup>11</sup>

## **Fines for aggravated murder**

The bill modifies the provision that specifies the amount of the fine that may be imposed for aggravated murder. Under the bill, in addition to any prison term imposed on an offender for aggravated murder the offender may be fined an amount fixed by the court, but not more than \$25,000 (currently, for both aggravated murder and murder, the amount is \$15,000 – the bill retains that amount for murder).<sup>12</sup>

## **Death penalty – current law**

Current Ohio law allows the death penalty only for the offense of aggravated murder when the offender also is convicted of one or more specifications of an aggravating circumstance and the court determines after applying a specified balancing

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<sup>8</sup> R.C. 120.35, not in (but repealed by) the bill in Section 2.

<sup>9</sup> R.C. 120.34.

<sup>10</sup> R.C. 120.34 and repeal of R.C. 120.35 in Section 2.

<sup>11</sup> Section 3, division (C).

<sup>12</sup> R.C. 2929.02(D).



test that the death penalty is appropriate, or for the offense of terrorism when the most serious offense comprising the terrorism is aggravated murder. When sentencing for terrorism in circumstances in which a death penalty is allowed, the same sentencing procedure is used as is used when sentencing for aggravated murder.

## **Offenses of aggravated murder and terrorism**

### **Aggravated murder**

Current law, unchanged by the bill, prohibits many different types of conduct that are included within the offense of aggravated murder. Under that offense, current law prohibits the following acts:<sup>13</sup>

(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, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, or escape;

(3) Purposely causing the death of another if: (a) the other person is under age 13 at the time of the commission of the offense, (b) the offender is under detention as a result of having been found guilty of or having pleaded guilty to a felony or has broken that detention, or (c) the other person is a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer and 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.

Whoever violates any of these prohibitions is guilty of aggravated murder and must be sentenced either to life imprisonment or, if the death penalty potentially is applicable, to death, as discussed below.<sup>14</sup>

### **Terrorism**

Current law, unchanged by the bill, prohibits a person from committing a "specified offense" (a defined term that includes aggravated murder) with purpose to intimidate or coerce a civilian population, to influence the policy of any government by intimidation or coercion, or to affect the conduct of any government by the specified offense. Whoever violates the prohibition is guilty of terrorism. The penalty for the

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<sup>13</sup> R.C. 2903.01, not in the bill.

<sup>14</sup> R.C. 2903.01(F), not in the bill, and 2929.02(A).



offense varies, depending upon the most serious underlying specified offense. If the most serious underlying specified offense is aggravated murder, the offender must be sentenced to life imprisonment without parole or death, using the same procedures that apply with respect to an offender convicted of aggravated murder.<sup>15</sup>

### **Sentencing procedures for aggravated murder and terrorism when an underlying charge is aggravated murder**

Currently, the only situations in which a person potentially might face a sentence of death is when the person is convicted of the offense of aggravated murder, or the offense of terrorism with an underlying charge being aggravated murder, and of one or more specifications of an "aggravating circumstance" (e.g., committed for hire, repeat offense, felony murder, law enforcement officer victim, under age 13 victim, etc.). If a person is convicted of the offense but no such specification, the court must sentence the person to life imprisonment without parole, life imprisonment with parole eligibility after serving 30 full years of imprisonment, life imprisonment with parole eligibility after serving 25 full years of imprisonment, life imprisonment with parole eligibility after serving 20 years of imprisonment, or a special type of life imprisonment under the Sexually Violent Predator Sentencing Law. If a person is convicted of both the offense and one or more such specification, and did not raise the matter of age or raised that matter and was found to have been 18 or older at the time of the commission of the offense, the trial jury and trial judge or the three-judge panel that tried the case conducts a sentencing hearing to determine whether to sentence the person to death or one of the life sentences described above.

In determining whether to impose the death penalty, the trial jury and trial judge or the three-judge panel conducts at a hearing a "balancing test" of the aggravating circumstances the offender was convicted of committing and all "mitigating factors" in the case (e.g., victim induced the offense, offender is youthful, offender lacked significant prior criminal history, offender was not a principal offender, etc.) and the offender may be sentenced to death only if the trial jury and trial judge or the three-judge panel determines that the former outweigh the latter in the case. If the trial jury and trial judge or the three-judge panel does not sentence the offender to death, it must sentence the offender to life imprisonment without parole, life imprisonment with parole eligibility after serving 30 full years of imprisonment, life imprisonment with parole eligibility after serving 25 full years of imprisonment, or a special type of sentence of life imprisonment under the Sexually Violent Predator Sentencing Law.

When a sentence of death is imposed, the offender is entitled as a matter of right to an appeal. If the sentence of death is set aside, nullified, or vacated for any of a list of

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<sup>15</sup> R.C. 2909.24.



specified reasons (including that the balancing test was not properly applied, the statutory procedure has been found to be unconstitutional, or the offender has an intellectual disability, etc.), the trial court must hold a resentencing hearing and sentence the offender to an available type of life imprisonment, under specified procedures. A defendant who asserts that he or she was under age 18 at the time of the alleged commission of the offense and is not found to have been at least age 18 at that time cannot be sentenced to death (note that the U.S. Supreme Court has held that a person who commits a capital offense prior to attaining age 18 may not be sentenced to death and also has held that a person with intellectual disability may not be executed<sup>16</sup>).

The bill repeals all of these provisions that pertain to the imposition of a sentence of death.<sup>17</sup>

## Repeals

The bill repeals 25 sections of the Revised Code.<sup>18</sup> The following table lists these sections, and a brief description of each.

Repealed section	Brief description
R.C. 109.97	Requires the Attorney General to prepare an annual capital case status report that contains information about every individual sentenced to death for committing an aggravated murder.
R.C. 120.35	Requires the State Public Defender to reimburse 50% of all costs and expenses of conducting the defense in capital cases.
R.C. 2725.19	Requires mandatory commitment of a person charged with a capital offense who is brought before a judge on a writ of <i>habeas corpus</i> .
R.C. 2929.021	Requires the clerk of court to file notice with the Supreme Court of any indictment that charges a defendant with aggravated murder and also contained one or more aggravating circumstances that could lead to a sentence of death.
R.C. 2929.022	Provides the option to a defendant charged with aggravated murder and one or more specifications of aggravating circumstances to have a panel of three judges or, if the defendant was tried by a jury, the trial judge, determine the existence of the aggravating circumstance of a prior conviction at the sentencing hearing.

<sup>16</sup> *Roper v. Simmons* (2005), 543 U.S. 551; *Atkins v. Virginia* (2002), 536 U.S. 304 and *Hall v. Florida* (2014), 572 U.S. \_\_\_\_.

<sup>17</sup> R.C. 2929.02; R.C. 2929.021 to 2929.06, not in (but repealed by) the bill in Section 2.

<sup>18</sup> Section 2.



Repealed section	Brief description
R.C. 2929.023	Permits a person charged with aggravated murder and one or more specifications of an aggravating circumstance to raise the matter of the person's age at the time of the alleged commission of the offense and to present evidence at trial that the person was not 18 years of age or older at the time of the alleged commission of the offense.
R.C. 2929.024	Requires the court to order that payment of fees and expenses for necessary services for an indigent defendant charged with aggravated murder be made in the same manner that payment for appointed counsel is made for other indigent defendants by the public defender.
R.C. 2929.03	Specifies sentences for offenders found guilty of aggravated murder, and prohibits imposition of the death penalty on an individual who raises the matter of age at trial and is found not to have been 18 at the time of the commission of the offense.
R.C. 2929.04	Lists the aggravating circumstances to be specified in the indictment and proved beyond a reasonable doubt before imposition of a sentence of death, and lists the mitigating factors that the panel of judges, trial judge, or jury must consider and weigh against the aggravating circumstances before imposing a sentence of death.
R.C. 2929.05	Requires the Supreme Court to review upon appeal the sentence of death at the same time that it reviews the other issues in the case, and to review and independently weigh all of the facts and other evidence disclosed in the record in the case and consider the offense and the offender to determine whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case, and whether the sentence of death is appropriate.
R.C. 2929.06	Describes procedures for resentencing hearings when a sentence of death is set aside, nullified, or vacated.
R.C. 2945.20	Provides that, when two or more persons are jointly indicted for a capital offense, except upon application and a judicial finding of good cause, they must be tried separately.
R.C. 2947.08	Requires at least 120 days between the date of imposition of a sentence of death and the resulting execution.
R.C. 2949.21	Requires a writ for the execution of the death penalty to be directed to the sheriff by the court issuing it, and requires the sheriff to privately convey the prisoner to the facility designated by the Director of Rehabilitation and Correction for the reception of the prisoner within 30 days.
R.C. 2949.22	Prescribes the method for executing a death sentence to be via lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death.
R.C. 2949.221	Provides for confidentiality of certain information regarding persons involved in the development, manufacture, and administration of lethal injections on persons sentenced to death.

<b>Repealed section</b>	<b>Brief description</b>
R.C. 2949.222	Provides for the sealing of records pertaining to the development, manufacture, and administration of lethal injections on persons sentenced to death.
R.C. 2949.24	Requires the warden or another person selected by the Director of Rehabilitation and Correction to proceed at the time and place named in the warrant to ensure that the death sentence of the prisoner under death sentence is executed, unless a suspension of execution was ordered by a court.
R.C. 2949.25	Lists the persons who may be present at the execution of a death sentence.
R.C. 2949.26	Prescribes the method for disposal of the body of an executed offender.
R.C. 2949.27	Requires the court to again fix the time for execution if an offender escapes after sentence of death and is not retaken before the time fixed for the offender's execution.
R.C. 2949.28	Requires notice to be sent to the sentencing court if a convict sentenced to death later appears not to have the mental capacity to understand the nature of the death penalty and why it was imposed upon the convict (i.e. appears to be "insane"), and prescribes procedures for the court to follow when determining whether or not the convict is insane.
R.C. 2949.29	Requires the prosecuting attorney, the convict, and the convict's counsel to attend an inquiry commenced by a court to determine whether a convict is insane, and prescribes procedures for providing treatment to a convict found to be insane.
R.C. 2949.31	Provides for suspension of a sentence of death if a female convict is found to be pregnant, and requires the court to set a new date for execution after the female is no longer pregnant.
R.C. 2967.08	Permits the Governor to grant a reprieve for a definite time to a person under sentence of death, with or without notices or application.

## **Cross-references and conforming changes**

The bill eliminates cross-references to the death penalty and related provisions, and confirms cross-references to divisions in other sections that are redesignated, in the following sections of the Revised Code: R.C. 9.07, 120.14, 120.18, 120.24, 120.28, 120.33(A) and (B), 1901.183, 2152.13, 2152.67, 2307.60, 2701.07, 2743.51, 2929.13, 2929.14(A), (B)(2), and (F), 2929.20(E), 2930.03, 2930.06, 2930.16, 2937.222, 2941.021, 2941.148, 2941.401, 2941.43, 2941.51, 2945.13, 2945.33, 2945.38, 2949.02, 2949.03, 2953.08, 2953.71, 2953.72, 2953.81, 2967.03, 2967.12, 2967.13, 2967.19, 2967.193, 2967.26, 2967.28, 2971.03(A), 2971.07, 5120.113, 5120.53, 5120.61, 5139.04, 5149.101, and 5919.16.



The bill amends several Revised Code sections to eliminate a process or procedure related to the death penalty that is contained in the particular section. The following table lists those sections and includes a brief description of that process or procedure.

Section	Brief description of process or procedure eliminated
R.C. 120.03(C)	Provides authority to the Ohio Public Defender Commission to prescribe special qualifications for counsel and co-counsel appointed in capital cases.
R.C. 120.06(F)	Requires attorneys appointed by the office of the State Public Defender to represent a petitioner in a post-conviction relief proceeding involving a sentence of death to be certified under Rule 20 of the Rules of Superintendence of the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.
R.C. 120.16(G)	Requires attorneys appointed by the office of the county public defender to represent a petitioner in a post-conviction relief proceeding involving a sentence of death to be certified under Rule 20 of the Rules of Superintendence of the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.
R.C. 120.26(G)	Requires attorneys appointed by the office of the joint county public defender to represent a petitioner in a post-conviction relief proceeding involving a sentence of death to be certified under Rule 20 of the Rules of Superintendence of the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.
R.C. 120.33(C)	Requires attorneys appointed by a board of county commissioners in lieu of using a county public defender or joint county public defender to represent a petitioner in a post-conviction relief proceeding involving a sentence of death to be certified under Rule 20 of the Rules of Superintendence of the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.
R.C. 120.33(D)	Creates the Capital Case Attorney Fee Council to set an amount, by case, or a rate on an hourly basis, to be paid to appointed counsel in a capital case.
R.C. 149.43(A)(1)(cc)	Exempts from the Public Records Law records that are made confidential under R.C. 2949.221, as described above in the table discussing repealed sections.
R.C. 2301.20(A) and (B)	Refers to preservation of shorthand notes of trial proceedings in capital cases.

Section	Brief description of process or procedure eliminated
R.C. 2317.02(A)(1)	Specifies that the attorney-client testimonial privilege does not apply concerning a communication between a client in a capital case and the client's attorney if the communication is relevant to an ineffective assistance of counsel claim by the client regarding the attorney's representation in the capital case.
R.C. 2901.02(B)	Classifies aggravated murder when the indictment included at least one aggravating circumstance as a capital offense.
R.C. 2929.61(A) and (B)	Specifies the law that applies regarding prosecution of a person charged with an offense, including a capital offense, committed prior to January 1, 1974.
R.C. 2930.19(D)	Specifies that if there is a conflict between a provision in the Crime Victims' Rights Law and a specific statute governing procedure in capital cases, the specific statute supersedes the Crime Victims' Rights Law provision.
R.C. 2941.14(B) and (C)	Describes the process for the inclusion of specifications of aggravating circumstances in an indictment charging aggravated murder and states that the death penalty is precluded without such a specification.
R.C. 2945.06	Describes the procedure for trial by a court composed of three judges of an offender charged with an offense punishable with death.
R.C. 2945.10(E)	Describes the procedure regarding jury instructions in a capital case being heard by a jury.
R.C. 2945.21(A)(2)	Describes the procedure for peremptory challenges of potential jurors when trying capital cases.
R.C. 2945.25(C)	Describes the procedure for challenges for cause of potential jurors when trying capital cases.
R.C. 2953.02	Describes the right to an appeal of a death sentence.
R.C. 2953.07	Requires the appellate court when a death sentence is affirmed to appoint a day for execution and issue a warrant to the sheriff or warden to carry the sentence out.
R.C. 2953.09(A)(2)(b)	Specifies the circumstances under which a court of common pleas or court of appeals may suspend the execution of a sentence of death.
R.C. 2953.10	Specifies the authority of the Supreme Court to suspend the execution of a sentence of death during appeal.
R.C. 2953.21	Describes the process for filing of post-conviction petition for relief for offenders sentenced to death, describes the discovery rules available in such a post-conviction action and other special rules applicable to the action, specifies the Supreme Court's authority to stay the execution of a sentence of death, and provides for the appointment of counsel to file post-conviction petitions for relief for offenders sentenced to death.

Section	Brief description of process or procedure eliminated
R.C. 2953.23	Describes the circumstances when a post-conviction petition for relief for an offender sentenced to death will be considered if filed after the deadline for filing such petitions and special provisions regarding notices of appeal and briefs in such a post-conviction action.
R.C. 2953.73(E)	Provides for an appeal to the Supreme Court, with leave of the Court, of a denial of DNA testing by a person who was sentenced to death.
R.C. 2967.05(C)	Specifies that an offender who is in imminent danger of death, medically incapacitated, or suffering from a terminal illness is ineligible for early release if sentenced to death.

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## HISTORY

### ACTION

### DATE

Introduced

03-07-17

S0094-I-132.docx/ar

