



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Jeff Hobday

H.B. 389

132nd General Assembly
(As Introduced)

Reps. Antonio, Antani, Fedor, Howse, Ingram, Lepore-Hagan, Ramos, Riedel, K. Smith

BILL SUMMARY

- Abolishes the death penalty in Ohio.
- Requires, generally, a person who is convicted of or pleads guilty to aggravated murder to be sentenced to one of three options:
 - Life imprisonment with parole eligibility after serving 20 full years of imprisonment;
 - Life imprisonment with parole eligibility after serving 30 full years of imprisonment;
 - Life imprisonment without parole.
- Requires a person who is convicted of or pleads guilty to aggravated murder of a victim under age 13 and who also is convicted of or pleads guilty to a sexual motivation specification to be sentenced to an indefinite prison term of 30 years to life under the Sexually Violent Predator Sentencing Law.
- Requires a person who is convicted of or pleads guilty to aggravated murder and also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification to be sentenced to life imprisonment without parole under the Sexually Violent Predator Sentencing Law.
- Requires a person who is convicted of or pleads guilty to terrorism when the most serious offense comprising the terrorism is aggravated murder to be sentenced to life imprisonment without parole.

- Specifies that nothing in the bill is intended to nullify or mitigate the sentence of an offender who was sentenced to death before the bill's effective date.
- 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 rights to appeal and to post-conviction remedies, including DNA testing, as the offender had immediately before the bill's effective date.
- Requires 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 to 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.
- Requires a court of common pleas that sentences a defendant to death before the bill's effective date to preserve the records in the action.

TABLE OF CONTENTS

Abolishment of the death penalty in Ohio	3
New sentencing for aggravated murder and terrorism	3
Aggravated murder.....	3
Terrorism.....	4
Fines for aggravated murder	4
Treatment of offenders sentenced to death before the bill's effective date	4
In general	4
Resentencing of offenders whose sentences were previously set aside, nullified, or vacated	4
Right to post-conviction DNA testing	5
Reimbursements for counties' costs of conducting defense in capital cases	5
Death penalty – current law.....	5
Offenses of aggravated murder and terrorism	6
Aggravated murder.....	6
Terrorism.....	6
Sentencing procedures for aggravated murder	7
Records retention.....	8
Representation of offenders sentenced to death before effective date	8
Ohio Public Defender Commission rules	8
Representation in post-conviction relief proceedings.....	8
Repeals.....	9
Cross-references and conforming changes.....	12



CONTENT AND OPERATION

Abolishment of the death penalty in Ohio

The bill abolishes the death penalty in Ohio.

New sentencing for aggravated murder and terrorism

Aggravated murder

Except as described in the next paragraph, the bill requires that a person who is convicted of or pleads guilty to aggravated murder (see "**Offenses of aggravated murder and terrorism**," below, for elements of that offense) be sentenced to one of three options:¹

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

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

(3) Life imprisonment without parole.

If a person is convicted of or pleads guilty to aggravated murder, the victim of the offense under age 13, and the offender also is convicted of or pleads guilty to a "sexual motivation specification" (a defined term) included in the document charging the offense, except as described in the next sentence, the court must impose an indefinite prison term of 30 years to life under the Sexually Violent Predator Sentencing Law. If a person is convicted of or pleads guilty to aggravated murder and also is convicted of or pleads guilty to a sexual motivation specification and a "sexually violent predator specification" (a defined term) included in the document charging the murder, the court must impose a term of life imprisonment without parole under the Sexually Violent Predator Sentencing Law.²

Currently, a sentence of death is a sentencing option in certain circumstances for a person who is convicted of or pleads guilty to aggravated murder (see "**Death penalty – current law**," below).

¹ R.C. 2929.02(A).

² 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).



Terrorism

The bill requires that a person who is convicted of or pleads guilty to terrorism when the most serious act of terrorism is aggravated murder (see "**Offenses of aggravated murder and terrorism**," below, for elements of that offense) be sentenced to life imprisonment without parole.³

Currently, a sentence of death is a sentencing option in certain circumstances for a person who is convicted of or pleads guilty to terrorism (see "**Death penalty – current law**," below).

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).⁴

Treatment of offenders sentenced to death before the bill's effective date

In general

The bill states that nothing in its provisions is intended to nullify or mitigate the sentence of an offender who was sentenced to death before its effective date.⁵

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 statute that pertains to the setting aside, nullification, or vacation of a death sentence and resentencing of the offender,⁶ 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 statute as it existed immediately before the bill's effective date.⁷

³ R.C. 2909.24.

⁴ R.C. 2929.02(D).

⁵ Section 3(B).

⁶ R.C. 2929.06, not in (but repealed by) the bill.

⁷ Section 3(A).



Right to post-conviction DNA testing

An offender who was sentenced to death before the bill's effective date will have the same rights to appeal and to post-conviction remedies, including DNA testing, as the offender had immediately before the bill's effective date or as the relevant provisions subsequently may be amended.⁸

Reimbursements for counties' costs 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.⁹ 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.¹⁰

The bill repeals the provisions that pertain to reimbursement in capital cases.¹¹ 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 until each case in which a defendant was sentenced to death is finally resolved.¹²

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

⁸ Section 3(B).

⁹ R.C. 120.35, not in (but repealed by) the bill.

¹⁰ R.C. 120.34.

¹¹ R.C. 120.34 and repeal of R.C. 120.35.

¹² R.C. 120.34 and Section 3(C).

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, 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:¹³

(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: the other person is under age 13 at the time of the commission of the offense; 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 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 one 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.¹⁴

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

¹³ R.C. 2903.01, not in the bill.

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



offense. Whoever violates the prohibition is guilty of terrorism. The penalty for the 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.¹⁵

Sentencing procedures for aggravated murder

Currently, the only situation in which a person potentially might face a sentence of death is when the person is convicted of the offense of aggravated murder, or terrorism with an underlying charge being an aggravated murder, and 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 specifications, 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 offense, offender is youth, offender lacked significant prior criminal history, offender was not principal, 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.

¹⁵ R.C. 2909.24.

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 specified reasons (including that the balancing test was not properly applied, the statutory procedure has been found to be unconstitutional, or the offender is mentally retarded, 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.

The bill repeals all of these provisions that pertain to the imposition of a sentence of death.¹⁶

Records retention

The bill requires a court of common pleas that sentenced a defendant to death before the bill's effective date to preserve the records of the action as required before the bill's effective date.¹⁷

Representation of offenders sentenced to death before effective date

Ohio Public Defender Commission rules

Currently, the Ohio Public Defender Commission is required to adopt rules prescribing minimum qualifications of appointed counsel, with the rules having to prescribe special qualifications for counsel and co-counsel in capital cases. The bill modifies this requirement to specify that the special qualifications portion applies with respect to counsel and co-counsel appointed in capital cases in which the defendant was sentenced to death before the bill's effective date.¹⁸

Representation in post-conviction relief proceedings

In cases in which the defendant was sentenced to death before the bill's effective date, the bill requires attorneys appointed to represent defendants in post-conviction relief proceedings to be certified under Rule 20 of the Rules of Superintendence of the Courts of Ohio (note that it appears that Superintendence Rule 20 no longer exists, but

¹⁶ R.C. 2929.02; R.C. 2929.021 to 2929.06, not in (but repealed by) the bill.

¹⁷ Section 3(D).

¹⁸ R.C. 120.03.



that there now is a separate set of Rules for Appointment of Counsel in Capital Cases that was adopted in 2015).¹⁹

Repeals

The bill repeals 25 sections of the Revised Code. The following chart 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	Specifies that a prisoner brought before a judge on a habeas corpus writ is confined for a capital offense, the judge may not remove, discharge, or grant bail for the prisoner.
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.
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.

¹⁹ Section 4.

Repealed section	Brief description
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

Repealed section	Brief description
	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	Generally prohibits disclosure of any information or record that indicates an individual's involvement in making, supplying, or administering drugs or equipment used in executions by lethal injection, and creates a civil cause of action for unauthorized disclosure of such information.
R.C. 2949.222	Requires a court to seal records pertaining to execution by lethal injection, and describes a process for the Director of Rehabilitation and Correction to follow if confidential information relating to execution by lethal injection is subpoenaed or requested by a court.
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.

Repealed section	Brief description
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 conforms cross-references to divisions in other sections that are re-designated, in the following sections of the Revised Code: R.C. 9.07, 120.14, 120.18, 120.24, 120.28, 120.33, 149.43, 1901.183, 2152.13, 2152.67, 2307.60, 2701.07, 2743.51, 2929.13, 2929.14, 2929.20, 2929.61, 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, 2953.73, 2953.81, 2967.03, 2967.12, 2967.13, 2967.19, 2967.193, 2967.26, 2967.28, 2971.03, 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 chart lists those sections and includes a brief description of that process or procedure.

Section	Brief description of process or procedure eliminated
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.

Section	Brief description of process or procedure eliminated
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. 2301.20(A) and (B)	Refers to preservation of shorthand notes of trial proceedings in capital cases.
R.C. 2317.02	Provides that communication between a client in a capital case and the client's attorney is not subject to testimonial privilege if the communication is relevant to a subsequent ineffective assistance of counsel claim by that client.
R.C. 2901.02(B)	Classifies aggravated murder when the indictment included at least one aggravating circumstance as a capital offense.
R.C. 2930.19(D)	Provides that when there is a conflict between a provision in the Victim's Rights Law and a specific statute governing the procedure in a capital case, the specific statute supersedes the Victim's Rights Law.
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.

Section	Brief description of process or procedure eliminated
R.C. 2941.51(E)	Requires the county auditor, in reporting expenses paid for indigent defendants, to separately state expenses that are reimbursable by the State Public Defender in capital cases.
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	Requires the court, in a capital case that is being heard by a jury, to prepare written instructions on the points of law, provide copies before orally instructing the jury, and permit the jury to consult the instructions during deliberations.
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(A) to (G) and (H) to (J)	Describes the process for filing of post-conviction petition for relief for offenders sentenced to death, 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.
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.
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.

HISTORY

ACTION

DATE

Introduced

10-23-17

H0389-I-132.docx/ks

