

(122nd General Assembly)  
(Substitute Senate Bill Number 107)

# AN ACT

To amend sections 2929.02, 2929.05, 2929.06, 2949.28, 2949.29, and 2949.31 and to repeal sections 2949.30 and 2949.32 of the Revised Code to revise the mechanism for vacating a sentence of death because it is imposed upon an offender under 18 and to revise the mechanism for suspending the execution of a pregnant or insane offender who is sentenced to death.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2929.02, 2929.05, 2929.06, 2949.28, 2949.29, and 2949.31 of the Revised Code be amended to read as follows:

Sec. 2929.02. (A) Whoever is convicted of or pleads guilty to aggravated murder in violation of section 2903.01 of the Revised Code shall suffer death or be imprisoned for life, as determined pursuant to sections 2929.022, 2929.03, and 2929.04 of the Revised Code, except that no person who raises the matter of age pursuant to section 2929.023 ~~or division (C) of section 2929.05~~ of the Revised Code and who is not found to have been eighteen years of age or older at the time of the commission of the offense shall suffer death. In addition, the offender may be fined an amount fixed by the court, but not more than twenty-five thousand dollars.

(B) Whoever is convicted of or pleads guilty to murder in violation of section 2903.02 of the Revised Code shall be imprisoned for an indefinite term of fifteen years to life, except that, if the offender also is convicted of or pleads guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the murder, the court shall impose upon the offender a term of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code. In addition, the offender may be fined an amount fixed by the court, but not more than fifteen thousand dollars.

(C) The court shall not impose a fine or fines for aggravated murder or murder which, in the aggregate and to the extent not suspended by the court,

exceeds the amount which the offender is or will be able to pay by the method and within the time allowed without undue hardship to the offender or to the dependents of the offender, or will prevent the offender from making reparation for the victim's wrongful death.

Sec. 2929.05. (A) Whenever sentence of death is imposed pursuant to sections 2929.03 and 2929.04 of the Revised Code, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall review upon appeal review the sentence of death at the same time that they review the other issues in the case. The court of appeals and the supreme court shall review the judgment in the case and the sentence of death imposed by the court or panel of three judges in the same manner that they review other criminal cases, except that they shall 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. In determining whether the sentence of death is appropriate, the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, and the supreme court shall consider whether the sentence is excessive or disproportionate to the penalty imposed in similar cases. They also shall also review all of the facts and other evidence to determine if the evidence supports the finding of the aggravating circumstances the trial jury or the panel of three judges found the offender guilty of committing, and shall determine whether the sentencing court properly weighed the aggravating circumstances the offender was found guilty of committing and the mitigating factors. The court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court shall affirm a sentence of death only if the particular court is persuaded from the record that the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors present in the case and that the sentence of death is the appropriate sentence in the case.

A court of appeals that reviews a case in which the sentence of death is imposed for an offense committed before January 1, 1995, shall file a separate opinion as to its findings in the case with the clerk of the supreme court. The opinion shall be filed within fifteen days after the court issues its opinion and shall contain whatever information is required by the clerk of the supreme court.

(B) The court of appeals, in a case in which a sentence of death was

imposed for an offense committed before January 1, 1995, and the supreme court shall give priority over all other cases to the review of judgments in which the sentence of death is imposed; and, except as otherwise provided in this section, shall conduct the review in accordance with the Rules of Appellate Rules Procedure.

(C) ~~Whenever At any time after a~~ sentence of death is imposed pursuant to section 2929.022 or 2929.03 of the Revised Code, the court of common pleas that sentenced the offender shall, ~~upon motion of the offender and after conducting a hearing on the motion,~~ vacate the sentence if ~~all of the following apply:~~

~~(1) The offender alleges in the motion and presents evidence at the hearing that the offender was not eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced;~~

~~(2) The the offender did not present evidence at trial pursuant to section 2929.023 of the Revised Code that the offender was not eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced;~~

~~(3) The motion was filed at any time after the sentence was imposed in the case and prior to execution of the sentence;~~

~~(4) At the hearing conducted on the motion, the prosecution does not prove beyond a reasonable doubt that the offender was eighteen years of age or older at the time of the commission of the aggravated murder for which the offender was sentenced and if the offender shows by a preponderance of the evidence that the offender was less than eighteen YEARS of age at the time of the COMMISSION of the aggravated murder for which the offender was sentenced. The court is not required to hold a hearing on a motion filed pursuant to this division unless the court finds, based on the motion and any supporting information submitted by the defendant, any information submitted by the prosecuting attorney, and the record in the case, including any previous hearings and orders, probable cause to believe that the defendant was not eighteen years of age or older at the time of the commission of the aggravated murder for which the defendant was sentenced to death.~~

Sec. 2929.06. (A)(+) If the sentence of death that is imposed upon an offender is vacated upon appeal because the court of appeals, in a case in which a sentence of death was imposed for an offense committed before January 1, 1995, or the supreme court, in cases in which the supreme court reviews the sentence upon appeal, could not affirm the sentence of death under the standards imposed by section 2929.05 of the Revised Code, is

vacated upon appeal for the sole reason that the statutory procedure for imposing the sentence of death that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, or is vacated pursuant to division (C) of section 2929.05 of the Revised Code, the trial court that sentenced the offender shall conduct a hearing to resentence the offender. At the resentencing hearing, the court shall impose one of the following sentences upon the offender:

(1) Except as provided in division (A)(2) of this section, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment;

(2) If the sentence of death was imposed for an aggravated murder committed on or after ~~the effective date of this amendment January 1, 1997,~~ and if the offender also was convicted of or pleaded guilty to a sexual motivation specification and a sexually violent predator specification that were included in the indictment, count in the indictment, or information that charged the aggravated murder, life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

~~(2)~~(B) If the sentence of death that is imposed upon an offender is vacated upon appeal because of error that occurred in the sentencing phase of the trial and if division (A)(1) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges, shall conduct the hearing. At the hearing, the court shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, or life imprisonment with parole eligibility after serving thirty full years of imprisonment.

~~(B)~~(C) If the sentence of life imprisonment without parole that is imposed upon an offender pursuant to section 2929.021 or 2929.03 of the Revised Code is vacated upon appeal for the sole reason that the statutory procedure for imposing the sentence of life imprisonment without parole that is set forth in sections 2929.03 and 2929.04 of the Revised Code is unconstitutional, the trial court that sentenced the offender shall conduct a hearing to resentence the offender to life imprisonment with parole eligibility after serving twenty-five full years of imprisonment or to life imprisonment with parole eligibility after serving thirty full years of

onment.

Sec. 2949.28. (A) As used in this section and section 2949.29 Of the Revised Code, "insane" means that the convict in question does not have the mental capacity to understand the nature of the death penalty and why it was imposed upon the convict.

(B)(1) If a convict sentenced to death appears to be insane, the warden or the sheriff having custody of such the convict, the convict's counsel, or a psychiatrist or psychologist who has examined the convict shall give notice thereof to a of the apparent insanity to whichever of the following is applicable:

(a) If the convict was tried by a jury, to the judge who imposed the sentence upon the convict or, if that judge is unavailable, to another judge of the same court of common pleas;

(b) If the convict was tried by a three-judge panel, to any of the three judges who imposed the sentence upon the convict or, if each of those judges is unavailable, to another judge of the same court of common pleas of the county in which the prisoner is confined. Said

(2) Upon receiving a notice pursuant to division (B)(1) of this section, a judge shall determine, based on the notice and any supporting information, any information submitted by the prosecuting attorney, and the record in the case, including previous hearings and orders, whether probable cause exists to believe that the convict is insane. If the judge finds that probable cause exists to believe that the convict is insane, the judge shall hold a hearing to determine WHETHER the convict is insane. If the judge does not find that probable cause of that nature exists, the judge may dismiss the matter without a hearing.

(3) If the judge who is given notice under division (B)(1) of this section finds probable cause to believe that the convict is insane, the judge shall inquire into such the convict's insanity at a time and place to be fixed by said the judge, or impanel a jury for that purpose and shall give immediate notice thereof of the inquiry to the prosecuting attorney of the county in which the prisoner was convicted. Execution who prosecuted the case, or that prosecuting attorney's successor, and to the convict and the convict's counsel. The judge may hold the inquiry at the place at which the convict is confined. If the convict does not have counsel, the court shall appoint an attorney to represent the convict in the inquiry. the court may appoint one or more psychiatrists or psychologists to examine the convict. The court shall not appoint a psychiatrist or psychologist who is an employee of the Department of rehabilitation and correction to examine the convict. the court shall conduct any hearing under this section and section 2949.29 of the

Revised Code and issue any ruling in the matter no later than sixty days from the date of the notice given under division (B)(1) of this section.

(4) execution of the sentence shall be suspended pending completion of the inquiry ONLY UPON AN ORDER OF THE SUPREME COURT. If the supreme court issues an order granting a stay of execution, the supreme court in that order also may authorize the court of common pleas to continue the stay of execution or to set a new date for execution as provided in this section or section 2949.29 Of the Revised Code.

(C) If the court appoints a psychiatrist or psychologist to examine the convict, the court shall inform the psychiatrist or psychologist of the location of the convict and of the purpose of the examination. The examiner shall have access to any available psychiatric or psychological report previously submitted to the court with respect to the mental condition of the convict, including, if applicable, a report regarding the convict's competency to stand trial or the convict's plea of not guilty by reason of insanity. The examiner also shall have access to any available current mental health and medical records of the convict.

The examiner shall conduct a thorough examination of the convict and shall submit a report to the court within thirty days of the examiner's appointment. The report shall contain the examiner's findings as to whether the convict has the mental capacity to understand the nature of the death penalty and why it was imposed upon the convict and the facts, in reasonable detail, upon which the findings are based.

Sec. 2949.29. In addition to the warden or sheriff, the judge of the court of common pleas, clerk of the court of common pleas, and (A) The prosecuting attorney, the convict, and the convict's counsel shall attend the an inquiry commenced as provided in section 2949.28 of the Revised Code. Witnesses The prosecuting attorney and the convict or the convict's counsel may be produced and examined before the judge or jury produce, examine, and cross-examine witnesses, and all findings shall be in writing signed by the judge or jury. If it is found that the convict is not insane, the sentence shall be executed at the time previously appointed, unless such that time has passed pending completion of the inquiry, in which case the judge conducting the inquiry, if authorized by the supreme court, shall appoint a time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's findings in the inquiry. If

(B) If it is found that the convict is insane and if authorized by the supreme court, the judge shall suspend the continue any stay of execution until the warden or sheriff receives a warrant from the governor directing such execution as provided in section 2949.30 of the Revised Code. The

~~finding, and the order of such judge, certified by him, shall be entered on the journal of the court by the clerk of the sentence previously issued, order the convict to be confined in the area at which other convicts sentenced to death are confined or in a maximum security medical or psychiatric facility operated by the department of rehabilitation and correction, and order treatment of the convict. Thereafter, the court at any time may conduct and, on motion of the prosecuting attorney, shall conduct a hearing pursuant to division (A) of this section to continue the inquiry into the convict's insanity and, as provided in section 2949.28 of the Revised Code, may appoint one or more psychiatrists or psychologists to make a further examination of the convict and to submit a report to the court. If the court finds at the hearing that the convict is not insane and if the time previously appointed for execution of the sentence has not passed, the sentence shall be executed at the previously appointed time. If the court finds at the hearing that the convict is not insane and if the time previously appointed for execution of the sentence has passed, the judge who conducts the hearing, if authorized by the supreme court, shall appoint a new time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's findings in the hearing.~~

(C) In all proceedings under this section, the convict is presumed not to be insane, and the court shall find that the convict is not insane unless the court finds by a preponderance of the evidence that the convict is insane.

(D) Proceedings for inquiry into the insanity of any convict sentenced to death shall be exclusively pursuant to this section, section 2949.28 Of the Revised Code, and the Rules of Evidence. Neither Chapter 5122. or 5123. Of the Revised Code nor any other provision Of the Revised Code nor any other rule concerning mentally ill persons, mentally retarded persons, or insane persons applies to any proceeding for inquiry into the insanity of any convict sentenced to death.

Sec. 2949.31. If a female convict sentenced to death appears to be pregnant, the warden or sheriff having custody of ~~such the convict, her counsel, or a physician who has examined the convict~~ shall give notice ~~thereof of the apparent pregnancy to a the appropriate~~ judge of the ~~appropriate~~ court of common pleas of the county in which the prisoner is ~~confined as determined in the same manner as is provided in divisions (B)(1)(a) and (b) of section 2949.28 Of the Revised Code,~~ and like proceedings shall be had as are provided under sections 2949.28 and 2949.29 of the Revised Code in case of an insane convict sentenced to death, ~~except to the extent that they by their nature clearly would be inapplicable.~~

If it is found at the inquiry held in accordance with sections 2949.28 and 2949.29 Of the Revised Code that the convict is not pregnant, the sentence shall be executed at the time previously appointed, unless that time has passed pending completion of the inquiry, in which case the judge conducting the inquiry, if authorized by the supreme court, shall appoint a new time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's ruling in the inquiry.

If it is found at the inquiry that the convict is pregnant, the judge shall suspend execution of the sentence and order the convict to be confined in the area at which other convicts sentenced to death are confined or in an appropriate medical facility. When the court finds that the convict no longer is pregnant, if the time previously appointed for execution of the sentence has not passed, the sentence shall be executed at the previously appointed time. When the court finds that the convict no longer is pregnant, if the time previously appointed for execution of the sentence has passed, the judge who conducts the inquiry, if authorized by the supreme court, shall appoint a new time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's ruling in the inquiry.

SECTION 2. That existing sections 2929.02, 2929.05, 2929.06, 2949.28, 2949.29, and 2949.31 and sections 2949.30 and 2949.32 of the Revised Code are hereby repealed.

SECTION 3. Section 2929.06 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 269, Sub. S.B. 258, and Am. Sub. H.B. 180 of the 121st General Assembly, with the new language of none of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_