

(122nd General Assembly)
(Substitute Senate Bill Number 193)

AN ACT

To amend sections 108.05, 141.011, 2903.01, and 2929.04 of the Revised Code to expand aggravated murder to also include purposely causing the death of another while under detention for a felony conviction or after having broken that detention and in specified circumstances purposely causing the death of a law enforcement officer or a specified Department of Rehabilitation and Correction employee, to include in the capital punishment aggravating circumstance that relates to committing the offense while under detention the circumstance of committing the offense while at large after having broken detention, to authorize the Governor to appoint the Lieutenant Governor as director of the Office of Criminal Justice Services, and to declare an emergency.

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

SECTION 1. That sections 108.05, 141.011, 2903.01, and 2929.04 of the Revised Code be amended to read as follows:

Sec. 108.05. (A) The lieutenant governor shall be a member of the governor's cabinet and shall preside at its meetings in the absence of the governor.

(B) The governor may appoint the lieutenant governor as an administrative department head listed in section 121.03 of the Revised Code, as director of the office of criminal justice services pursuant to section 181.52 of the Revised Code, as his the governor's representative on any board, agency, committee, or commission of which the governor is a member and has the authority to appoint a representative, or in an advisory capacity to any nonelective board, agency, committee, or commission in the executive department; or may give the lieutenant governor any special assignment as the governor considers in the interest of the state.

(C) When carrying out any of the functions described in division (B) of this section, the lieutenant governor shall be reimbursed from funds of the particular authority for necessary expenses incurred in the conduct of authority business.

Sec. 141.011. Notwithstanding section 141.01 of the Revised Code, beginning in calendar year 1987, the annual salaries of the elective officers of the state shall be as follows rather than as prescribed by divisions (A) to (F) of such section:

(A)(1) In calendar year 1991 the annual salary of the governor shall be one hundred thousand dollars.

(2) In calendar year 1992 the annual salary of the governor shall be five per cent more than in 1991.

(3) In calendar year 1993 the annual salary of the governor shall be five per cent more than in 1992.

(4) In calendar year 1994 the annual salary of the governor shall be five per cent more than in 1993, and in calendar years 1995, 1996, 1997, and 1998 the annual salary shall be the same as in calendar year 1994.

(5) In calendar year 1999 the annual salary of the governor shall be three per cent more than in 1998.

(6) In calendar year 2000 the annual salary of the governor shall be three per cent more than in 1999.

(7) In calendar year 2001 the annual salary of the governor shall be three per cent more than in 2000.

(8) In calendar year 2002 and thereafter the annual salary of the governor shall be three per cent more than in 2001.

(B)(1) In calendar year 1987 the annual salary of the lieutenant governor shall be an amount produced by increasing thirty-five thousand dollars by five per cent compounded for each of the years 1984, 1985, 1986, and 1987.

(2) In calendar year 1988 the annual salary of the lieutenant governor shall be five per cent more than in 1987.

(3) In calendar year 1989 the annual salary of the lieutenant governor shall be five per cent more than in 1988.

(4) In calendar year 1990 the annual salary of the lieutenant governor shall be five per cent more than in 1989.

(5) In calendar year 1991 the annual salary of the lieutenant governor shall be five per cent more than in 1990.

(6) In calendar year 1992 the annual salary of the lieutenant governor shall be five per cent more than in 1991.

(7) In calendar year 1993 the annual salary of the lieutenant governor shall be five per cent more than in 1992.

(8) In calendar year 1994 the annual salary of the lieutenant governor shall be five per cent more than in 1993, and in calendar years 1995, 1996, 1997, and 1998 the annual salary shall be the same as in calendar year 1994.

(9) In calendar year 1999 the annual salary of the lieutenant governor shall be sixty-two thousand five hundred dollars.

(10) In calendar year 2000 the annual salary of the lieutenant governor shall be three per cent more than in 1999.

(11) In calendar year 2001 the annual salary of the lieutenant governor shall be three per cent more than in 2000.

(12) In calendar year 2002 and thereafter the annual salary of the lieutenant governor shall be three per cent more than in 2001.

If the governor appoints the lieutenant governor as an administrative department head or as the director of the office of criminal justice services under section 108.05 of the Revised Code, the lieutenant governor may accept the salary for that office while serving as its head in lieu of the salary for the office of lieutenant governor.

(C)(1) In calendar year 1987 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each produced by increasing fifty thousand dollars by five per cent compounded for each of the years 1984, 1985, 1986, and 1987.

(2) In calendar year 1988 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each that is five per cent more than in 1987.

(3) In calendar year 1989 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each that is five per cent more than in 1988.

(4) In calendar year 1990 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each that is five per cent more than in 1989.

(5) In calendar year 1991 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each that is five per cent more than in 1990.

(6) In calendar year 1992 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each that is five per cent more than in 1991.

(7) In calendar year 1993 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount for each that is five per cent more than in 1992.

(8) In calendar year 1994 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be an amount

for each that is five per cent more than in 1993, and in calendar years 1995, 1996, 1997, and 1998 the annual salary shall be the same as in calendar year 1994.

(9) In calendar year 1999 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be three per cent more than in 1998.

(10) In calendar year 2000 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be three per cent more than in 1999.

(11) In calendar year 2001 the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be three per cent more than in 2000.

(12) In calendar year 2002 and thereafter the annual salary of the secretary of state, auditor of state, treasurer of state, and attorney general shall be three per cent more than in 2001.

(D) Upon the death of an elected executive officer of the state listed in divisions (A) to (F) of section 141.01 of the Revised Code during that person's term of office, an amount shall be paid in accordance with section 2113.04 of the Revised Code, or to that person's estate. The amount shall equal the amount of the salary that the officer would have received during the remainder of the officer's unexpired term or an amount equal to the salary of that person's office for two years, whichever is less.

Sec. 2903.01. (A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall purposely cause 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 or arson, aggravated robbery or robbery, aggravated burglary or burglary, or escape.

(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.

(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.

(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:

(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.

(2) It is the offender's specific purpose to kill a law enforcement officer.

(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

(G) As used in this section:

(1) "Detention" has the same meaning as in section 2921.01 of the Revised Code.

(2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code.

Sec. 2929.04. (A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section 2941.14 of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was ~~a prisoner in a detention facility, as defined under~~ detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or mental retardation and developmentally disabled facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill

another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design.

(8) The victim of the aggravated murder was a witness to an offense who was purposely killed to prevent the victim's testimony in any criminal proceeding and the aggravated murder was not committed during the commission, attempted commission, or flight immediately after the commission or attempted commission of the offense to which the victim was a witness, or the victim of the aggravated murder was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding.

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under thirteen years of age at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

(B) If one or more of the aggravating circumstances listed in division (A) of this section is specified in the indictment or count in the indictment and proved beyond a reasonable doubt, and if the offender did not raise the matter of age pursuant to section 2929.023 of the Revised Code or if the offender, after raising the matter of age, was found at trial to have been eighteen years of age or older at the time of the commission of the offense, the court, trial jury, or panel of three judges shall consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors:

- (1) Whether the victim of the offense induced or facilitated it;
- (2) Whether it is unlikely that the offense would have been committed,

but for the fact that the offender was under duress, coercion, or strong provocation;

(3) Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law;

(4) The youth of the offender;

(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;

(6) If the offender was a participant in the offense but not the principal offender, the degree of the offender's participation in the offense and the degree of the offender's participation in the acts that led to the death of the victim;

(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.

(C) The defendant shall be given great latitude in the presentation of evidence of the factors listed in division (B) of this section and of any other factors in mitigation of the imposition of the sentence of death.

The existence of any of the mitigating factors listed in division (B) of this section does not preclude the imposition of a sentence of death on the offender but shall be weighed pursuant to divisions (D)(2) and (3) of section 2929.03 of the Revised Code by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing.

SECTION 2. That existing sections 108.05, 141.011, 2903.01, and 2929.04 of the Revised Code are hereby repealed.

SECTION 3. Section 2929.04 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 151 and Am. S.B. 32 of the 122nd General Assembly, with the new language of neither 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.

SECTION 4. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is to maximize the ability of the Office of Criminal Justice Services to serve as a criminal justice services agency. Therefore, this act shall go into immediate effect.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

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

Director, Legislative Service Commission.

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

Secretary of State.

File No. _____ Effective Date _____