

# As Passed by the House

125th General Assembly  
Regular Session  
2003-2004

H. B. No. 184

Representatives Schmidt, McGregor, Aslanides, Schaffer, Schneider,  
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J. Stewart, Taylor, Wagner, Webster, Widener, Widowfield

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## A B I L L

To amend section 2929.03 of the Revised Code to	1
permit the imposition of a sentence of life	2
imprisonment without parole, life imprisonment	3
with parole eligibility after serving 25 full	4
years of imprisonment, or life imprisonment with	5
parole eligibility after serving 30 full years of	6
imprisonment when an offender is convicted of or	7
pleads guilty to aggravated murder and is not	8
charged with or convicted of an aggravating	9
circumstance.	10

## BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

<b>Section 1.</b> That section 2929.03 of the Revised Code be	11
amended to read as follows:	12

<b>Sec. 2929.03.</b> (A) If the indictment or count in the	13
indictment charging aggravated murder does not contain one or more	14
specifications of aggravating circumstances listed in division (A)	15

of section 2929.04 of the Revised Code, then, following a verdict 16  
of guilty of the charge of aggravated murder, the trial court 17  
shall impose sentence on the offender as follows: 18

(1) Except as provided in division (A)(2) of this section, 19  
the trial court shall impose ~~a sentence of life imprisonment with~~ 20  
~~parole eligibility after serving twenty years of imprisonment~~ one 21  
of the following sentences on the offender: 22

(a) Life imprisonment without parole; 23

(b) Life imprisonment with parole eligibility after serving 24  
twenty years of imprisonment; 25

(c) Life imprisonment with parole eligibility after serving 26  
twenty-five full years of imprisonment; 27

(d) Life imprisonment with parole eligibility after serving 28  
thirty full years of imprisonment. 29

(2) If the offender also is convicted of or pleads guilty to 30  
a sexual motivation specification and a sexually violent predator 31  
specification that are included in the indictment, count in the 32  
indictment, or information that charged the aggravated murder, the 33  
trial court shall impose upon the offender a sentence of life 34  
imprisonment without parole that shall be served pursuant to 35  
section 2971.03 of the Revised Code. 36

(B) If the indictment or count in the indictment charging 37  
aggravated murder contains one or more specifications of 38  
aggravating circumstances listed in division (A) of section 39  
2929.04 of the Revised Code, the verdict shall separately state 40  
whether the accused is found guilty or not guilty of the principal 41  
charge and, if guilty of the principal charge, whether the 42  
offender was eighteen years of age or older at the time of the 43  
commission of the offense, if the matter of age was raised by the 44  
offender pursuant to section 2929.023 of the Revised Code, and 45

whether the offender is guilty or not guilty of each 46  
specification. The jury shall be instructed on its duties in this 47  
regard. The instruction to the jury shall include an instruction 48  
that a specification shall be proved beyond a reasonable doubt in 49  
order to support a guilty verdict on the specification, but the 50  
instruction shall not mention the penalty that may be the 51  
consequence of a guilty or not guilty verdict on any charge or 52  
specification. 53

(C)(1) If the indictment or count in the indictment charging 54  
aggravated murder contains one or more specifications of 55  
aggravating circumstances listed in division (A) of section 56  
2929.04 of the Revised Code, then, following a verdict of guilty 57  
of the charge but not guilty of each of the specifications, and 58  
regardless of whether the offender raised the matter of age 59  
pursuant to section 2929.023 of the Revised Code, the trial court 60  
shall impose sentence on the offender as follows: 61

(a) Except as provided in division (C)(1)(b) of this section, 62  
the trial court shall impose ~~a sentence of life imprisonment with~~ 63  
~~parole eligibility after serving twenty years of imprisonment~~ one 64  
of the following sentences on the offender: 65

(i) Life imprisonment without parole; 66

(ii) Life imprisonment with parole eligibility after serving 67  
twenty years of imprisonment; 68

(iii) Life imprisonment with parole eligibility after serving 69  
twenty-five full years of imprisonment; 70

(iv) Life imprisonment with parole eligibility after serving 71  
thirty full years of imprisonment. 72

(b) If the offender also is convicted of or pleads guilty to 73  
a sexual motivation specification and a sexually violent predator 74  
specification that are included in the indictment, count in the 75  
indictment, or information that charged the aggravated murder, the 76

trial court shall impose upon the offender a sentence of life 77  
imprisonment without parole that shall be served pursuant to 78  
section 2971.03 of the Revised Code. 79

(2)(a) If the indictment or count in the indictment contains 80  
one or more specifications of aggravating circumstances listed in 81  
division (A) of section 2929.04 of the Revised Code and if the 82  
offender is found guilty of both the charge and one or more of the 83  
specifications, the penalty to be imposed on the offender shall be 84  
one of the following: 85

(i) Except as provided in division (C)(2)(a)(ii) of this 86  
section, the penalty to be imposed on the offender shall be death, 87  
life imprisonment without parole, life imprisonment with parole 88  
eligibility after serving twenty-five full years of imprisonment, 89  
or life imprisonment with parole eligibility after serving thirty 90  
full years of imprisonment. 91

(ii) If the offender also is convicted of or pleads guilty to 92  
a sexual motivation specification and a sexually violent predator 93  
specification that are included in the indictment, count in the 94  
indictment, or information that charged the aggravated murder, the 95  
penalty to be imposed on the offender shall be death or life 96  
imprisonment without parole that shall be served pursuant to 97  
section 2971.03 of the Revised Code. 98

(b) A penalty imposed pursuant to division (C)(2)(a)(i) or 99  
(ii) of this section shall be determined pursuant to divisions (D) 100  
and (E) of this section and shall be determined by one of the 101  
following: 102

(i) By the panel of three judges that tried the offender upon 103  
the offender's waiver of the right to trial by jury; 104

(ii) By the trial jury and the trial judge, if the offender 105  
was tried by jury. 106

(D)(1) Death may not be imposed as a penalty for aggravated 107

murder if the offender raised the matter of age at trial pursuant 108  
to section 2929.023 of the Revised Code and was not found at trial 109  
to have been eighteen years of age or older at the time of the 110  
commission of the offense. When death may be imposed as a penalty 111  
for aggravated murder, the court shall proceed under this 112  
division. When death may be imposed as a penalty, the court, upon 113  
the request of the defendant, shall require a pre-sentence 114  
investigation to be made and, upon the request of the defendant, 115  
shall require a mental examination to be made, and shall require 116  
reports of the investigation and of any mental examination 117  
submitted to the court, pursuant to section 2947.06 of the Revised 118  
Code. No statement made or information provided by a defendant in 119  
a mental examination or proceeding conducted pursuant to this 120  
division shall be disclosed to any person, except as provided in 121  
this division, or be used in evidence against the defendant on the 122  
issue of guilt in any retrial. A pre-sentence investigation or 123  
mental examination shall not be made except upon request of the 124  
defendant. Copies of any reports prepared under this division 125  
shall be furnished to the court, to the trial jury if the offender 126  
was tried by a jury, to the prosecutor, and to the offender or the 127  
offender's counsel for use under this division. The court, and the 128  
trial jury if the offender was tried by a jury, shall consider any 129  
report prepared pursuant to this division and furnished to it and 130  
any evidence raised at trial that is relevant to the aggravating 131  
circumstances the offender was found guilty of committing or to 132  
any factors in mitigation of the imposition of the sentence of 133  
death, shall hear testimony and other evidence that is relevant to 134  
the nature and circumstances of the aggravating circumstances the 135  
offender was found guilty of committing, the mitigating factors 136  
set forth in division (B) of section 2929.04 of the Revised Code, 137  
and any other factors in mitigation of the imposition of the 138  
sentence of death, and shall hear the statement, if any, of the 139  
offender, and the arguments, if any, of counsel for the defense 140

and prosecution, that are relevant to the penalty that should be 141  
imposed on the offender. The defendant shall be given great 142  
latitude in the presentation of evidence of the mitigating factors 143  
set forth in division (B) of section 2929.04 of the Revised Code 144  
and of any other factors in mitigation of the imposition of the 145  
sentence of death. If the offender chooses to make a statement, 146  
the offender is subject to cross-examination only if the offender 147  
consents to make the statement under oath or affirmation. 148

The defendant shall have the burden of going forward with the 149  
evidence of any factors in mitigation of the imposition of the 150  
sentence of death. The prosecution shall have the burden of 151  
proving, by proof beyond a reasonable doubt, that the aggravating 152  
circumstances the defendant was found guilty of committing are 153  
sufficient to outweigh the factors in mitigation of the imposition 154  
of the sentence of death. 155

(2) Upon consideration of the relevant evidence raised at 156  
trial, the testimony, other evidence, statement of the offender, 157  
arguments of counsel, and, if applicable, the reports submitted 158  
pursuant to division (D)(1) of this section, the trial jury, if 159  
the offender was tried by a jury, shall determine whether the 160  
aggravating circumstances the offender was found guilty of 161  
committing are sufficient to outweigh the mitigating factors 162  
present in the case. If the trial jury unanimously finds, by proof 163  
beyond a reasonable doubt, that the aggravating circumstances the 164  
offender was found guilty of committing outweigh the mitigating 165  
factors, the trial jury shall recommend to the court that the 166  
sentence of death be imposed on the offender. Absent such a 167  
finding, the jury shall recommend that the offender be sentenced 168  
to one of the following: 169

(a) Except as provided in division (D)(2)(b) of this section, 170  
to life imprisonment without parole, life imprisonment with parole 171  
eligibility after serving twenty-five full years of imprisonment, 172

or life imprisonment with parole eligibility after serving thirty 173  
full years of imprisonment; 174

(b) If the offender also is convicted of or pleads guilty to 175  
a sexual motivation specification and a sexually violent predator 176  
specification that are included in the indictment, count in the 177  
indictment, or information that charged the aggravated murder, to 178  
life imprisonment without parole. 179

If the trial jury recommends that the offender be sentenced 180  
to life imprisonment without parole, life imprisonment with parole 181  
eligibility after serving twenty-five full years of imprisonment, 182  
or life imprisonment with parole eligibility after serving thirty 183  
full years of imprisonment, the court shall impose the sentence 184  
recommended by the jury upon the offender. If the sentence is a 185  
sentence of life imprisonment without parole imposed under 186  
division (D)(2)(b) of this section, the sentence shall be served 187  
pursuant to section 2971.03 of the Revised Code. If the trial jury 188  
recommends that the sentence of death be imposed upon the 189  
offender, the court shall proceed to impose sentence pursuant to 190  
division (D)(3) of this section. 191

(3) Upon consideration of the relevant evidence raised at 192  
trial, the testimony, other evidence, statement of the offender, 193  
arguments of counsel, and, if applicable, the reports submitted to 194  
the court pursuant to division (D)(1) of this section, if, after 195  
receiving pursuant to division (D)(2) of this section the trial 196  
jury's recommendation that the sentence of death be imposed, the 197  
court finds, by proof beyond a reasonable doubt, or if the panel 198  
of three judges unanimously finds, by proof beyond a reasonable 199  
doubt, that the aggravating circumstances the offender was found 200  
guilty of committing outweigh the mitigating factors, it shall 201  
impose sentence of death on the offender. Absent such a finding by 202  
the court or panel, the court or the panel shall impose one of the 203  
following sentences on the offender: 204

(a) Except as provided in division (D)(3)(b) of this section, 205  
one of the following: 206

(i) Life imprisonment without parole; 207

(ii) Life imprisonment with parole eligibility after serving 208  
twenty-five full years of imprisonment; 209

(iii) Life imprisonment with parole eligibility after serving 210  
thirty full years of imprisonment. 211

(b) If the offender also is convicted of or pleads guilty to 212  
a sexual motivation specification and a sexually violent predator 213  
specification that are included in the indictment, count in the 214  
indictment, or information that charged the aggravated murder, 215  
life imprisonment without parole that shall be served pursuant to 216  
section 2971.03 of the Revised Code. 217

(E) If the offender raised the matter of age at trial 218  
pursuant to section 2929.023 of the Revised Code, was convicted of 219  
aggravated murder and one or more specifications of an aggravating 220  
circumstance listed in division (A) of section 2929.04 of the 221  
Revised Code, and was not found at trial to have been eighteen 222  
years of age or older at the time of the commission of the 223  
offense, the court or the panel of three judges shall not impose a 224  
sentence of death on the offender. Instead, the court or panel 225  
shall impose one of the following sentences on the offender: 226

(1) Except as provided in division (E)(2) of this section, 227  
one of the following: 228

(a) Life imprisonment without parole; 229

(b) Life imprisonment with parole eligibility after serving 230  
twenty-five full years of imprisonment; 231

(c) Life imprisonment with parole eligibility after serving 232  
thirty full years of imprisonment. 233

(2) If the offender also is convicted of or pleads guilty to 234



a sexual motivation specification and a sexually violent predator  
specification that are 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.

(F) The court or the panel of three judges, when it imposes  
sentence of death, shall state in a separate opinion its specific  
findings as to the existence of any of the mitigating factors set  
forth in division (B) of section 2929.04 of the Revised Code, the  
existence of any other mitigating factors, the aggravating  
circumstances the offender was found guilty of committing, and the  
reasons why the aggravating circumstances the offender was found  
guilty of committing were sufficient to outweigh the mitigating  
factors. The court or panel, when it imposes life imprisonment  
under division (D) of this section, shall state in a separate  
opinion its specific findings of which of the mitigating factors  
set forth in division (B) of section 2929.04 of the Revised Code  
it found to exist, what other mitigating factors it found to  
exist, what aggravating circumstances the offender was found  
guilty of committing, and why it could not find that these  
aggravating circumstances were sufficient to outweigh the  
mitigating factors. For cases in which a sentence of death is  
imposed for an offense committed before January 1, 1995, the court  
or panel shall file the opinion required to be prepared by this  
division with the clerk of the appropriate court of appeals and  
with the clerk of the supreme court within fifteen days after the  
court or panel imposes sentence. For cases in which a sentence of  
death is imposed for an offense committed on or after January 1,  
1995, the court or panel shall file the opinion required to be  
prepared by this division with the clerk of the supreme court  
within fifteen days after the court or panel imposes sentence. The  
judgment in a case in which a sentencing hearing is held pursuant  
to this section is not final until the opinion is filed.

(G)(1) Whenever the court or a panel of three judges imposes 268  
a sentence of death for an offense committed before January 1, 269  
1995, the clerk of the court in which the judgment is rendered 270  
shall deliver the entire record in the case to the appellate 271  
court. 272

(2) Whenever the court or a panel of three judges imposes a 273  
sentence of death for an offense committed on or after January 1, 274  
1995, the clerk of the court in which the judgment is rendered 275  
shall deliver the entire record in the case to the supreme court. 276

**Section 2.** That existing section 2929.03 of the Revised Code 277  
is hereby repealed. 278

**Section 3.** Section 2929.03 of the Revised Code is presented 279  
in this act as a composite of the section as amended by both Am. 280  
Sub. H.B. 180 and Am. Sub. S.B. 269 of the 121st General Assembly. 281  
The General Assembly, applying the principle stated in division 282  
(B) of section 1.52 of the Revised Code that amendments are to be 283  
harmonized if reasonably capable of simultaneous operation, finds 284  
that the composite is the resulting version of the section in 285  
effect prior to the effective date of the section as presented in 286  
this act. 287