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Sub. H. B. No. 184

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White

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A B I L L

To amend sections 2929.03 and 2929.06 of the Revised 1
Code to permit the imposition of a sentence of 2
life imprisonment without parole, life 3
imprisonment with parole eligibility after serving 4
25 full years of imprisonment, or life 5
imprisonment with parole eligibility after serving 6
30 full years of imprisonment when an offender is 7
convicted of or pleads guilty to aggravated murder 8
and is not charged with or convicted of an 9
aggravating circumstance and to clarify and revise 10
the procedures that govern the resentencing of a 11
person sentenced to death whose sentence is set 12
aside, nullified, or vacated. 13

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

Section 1. That sections 2929.03 and 2929.06 of the Revised 14

Code be amended to read as follows: 15

Sec. 2929.03. (A) If the indictment or count in the 16
indictment charging aggravated murder does not contain one or more 17
specifications of aggravating circumstances listed in division (A) 18
of section 2929.04 of the Revised Code, then, following a verdict 19
of guilty of the charge of aggravated murder, the trial court 20
shall impose sentence on the offender as follows: 21

(1) Except as provided in division (A)(2) of this section, 22
the trial court shall impose ~~a sentence of life imprisonment with~~ 23
~~parole eligibility after serving twenty years of imprisonment~~ one 24
of the following sentences on the offender: 25

(a) Life imprisonment without parole; 26

(b) Life imprisonment with parole eligibility after serving 27
twenty years of imprisonment; 28

(c) Life imprisonment with parole eligibility after serving 29
twenty-five full years of imprisonment; 30

(d) Life imprisonment with parole eligibility after serving 31
thirty full years of imprisonment. 32

(2) If the offender also is convicted of or pleads guilty to 33
a sexual motivation specification and a sexually violent predator 34
specification that are included in the indictment, count in the 35
indictment, or information that charged the aggravated murder, the 36
trial court shall impose upon the offender a sentence of life 37
imprisonment without parole that shall be served pursuant to 38
section 2971.03 of the Revised Code. 39

(B) If the indictment or count in the indictment charging 40
aggravated murder contains one or more specifications of 41
aggravating circumstances listed in division (A) of section 42
2929.04 of the Revised Code, the verdict shall separately state 43

whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

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

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

(i) Life imprisonment without parole;

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

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

(iv) Life imprisonment with parole eligibility after serving

thirty full years of imprisonment.

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(b) If the offender also is convicted of or pleads guilty to 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, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

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

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(i) Except as provided in division (C)(2)(a)(ii) of this section, the penalty to be imposed on the offender shall be 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.

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(ii) If the offender also is convicted of or pleads guilty to 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, the penalty to be imposed on the offender shall be death or life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

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

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(i) By the panel of three judges that tried the offender upon 106
the offender's waiver of the right to trial by jury; 107

(ii) By the trial jury and the trial judge, if the offender 108
was tried by jury. 109

(D)(1) Death may not be imposed as a penalty for aggravated 110
murder if the offender raised the matter of age at trial pursuant 111
to section 2929.023 of the Revised Code and was not found at trial 112
to have been eighteen years of age or older at the time of the 113
commission of the offense. When death may be imposed as a penalty 114
for aggravated murder, the court shall proceed under this 115
division. When death may be imposed as a penalty, the court, upon 116
the request of the defendant, shall require a pre-sentence 117
investigation to be made and, upon the request of the defendant, 118
shall require a mental examination to be made, and shall require 119
reports of the investigation and of any mental examination 120
submitted to the court, pursuant to section 2947.06 of the Revised 121
Code. No statement made or information provided by a defendant in 122
a mental examination or proceeding conducted pursuant to this 123
division shall be disclosed to any person, except as provided in 124
this division, or be used in evidence against the defendant on the 125
issue of guilt in any retrial. A pre-sentence investigation or 126
mental examination shall not be made except upon request of the 127
defendant. Copies of any reports prepared under this division 128
shall be furnished to the court, to the trial jury if the offender 129
was tried by a jury, to the prosecutor, and to the offender or the 130
offender's counsel for use under this division. The court, and the 131
trial jury if the offender was tried by a jury, shall consider any 132
report prepared pursuant to this division and furnished to it and 133
any evidence raised at trial that is relevant to the aggravating 134
circumstances the offender was found guilty of committing or to 135
any factors in mitigation of the imposition of the sentence of 136
death, shall hear testimony and other evidence that is relevant to 137

the nature and circumstances of the aggravating circumstances the 138
offender was found guilty of committing, the mitigating factors 139
set forth in division (B) of section 2929.04 of the Revised Code, 140
and any other factors in mitigation of the imposition of the 141
sentence of death, and shall hear the statement, if any, of the 142
offender, and the arguments, if any, of counsel for the defense 143
and prosecution, that are relevant to the penalty that should be 144
imposed on the offender. The defendant shall be given great 145
latitude in the presentation of evidence of the mitigating factors 146
set forth in division (B) of section 2929.04 of the Revised Code 147
and of any other factors in mitigation of the imposition of the 148
sentence of death. If the offender chooses to make a statement, 149
the offender is subject to cross-examination only if the offender 150
consents to make the statement under oath or affirmation. 151

The defendant shall have the burden of going forward with the 152
evidence of any factors in mitigation of the imposition of the 153
sentence of death. The prosecution shall have the burden of 154
proving, by proof beyond a reasonable doubt, that the aggravating 155
circumstances the defendant was found guilty of committing are 156
sufficient to outweigh the factors in mitigation of the imposition 157
of the sentence of death. 158

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

sentence of death be imposed on the offender. Absent such a finding, the jury shall recommend that the offender be sentenced to one of the following:

(a) Except as provided in division (D)(2)(b) of this section, to 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) If the offender also is convicted of or pleads guilty to 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, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to 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, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is a sentence of life imprisonment without parole imposed under division (D)(2)(b) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D)(3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender, arguments of counsel, and, if applicable, the reports submitted to the court pursuant to division (D)(1) of this section, if, after receiving pursuant to division (D)(2) of this section the trial jury's recommendation that the sentence of death be imposed, the

court finds, by proof beyond a reasonable doubt, or if the panel
of three judges unanimously finds, by proof beyond a reasonable
doubt, that the aggravating circumstances the offender was found
guilty of committing outweigh the mitigating factors, it shall
impose sentence of death on the offender. Absent such a finding by
the court or panel, the court or the panel shall impose one of the
following sentences on the offender:

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

(i) Life imprisonment without parole;

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

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

(b) If the offender also is convicted of or pleads guilty to
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.

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

(1) Except as provided in division (E)(2) of this section,

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| one of the following: | 231 |
| (a) Life imprisonment without parole; | 232 |
| (b) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment; | 233 234 |
| (c) Life imprisonment with parole eligibility after serving thirty full years of imprisonment. | 235 236 |
| (2) If the offender also is convicted of or pleads guilty to 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. | 237 238 239 240 241 242 |
| (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 | 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 |

division with the clerk of the appropriate court of appeals and 262
with the clerk of the supreme court within fifteen days after the 263
court or panel imposes sentence. For cases in which a sentence of 264
death is imposed for an offense committed on or after January 1, 265
1995, the court or panel shall file the opinion required to be 266
prepared by this division with the clerk of the supreme court 267
within fifteen days after the court or panel imposes sentence. The 268
judgment in a case in which a sentencing hearing is held pursuant 269
to this section is not final until the opinion is filed. 270

(G)(1) Whenever the court or a panel of three judges imposes 271
a sentence of death for an offense committed before January 1, 272
1995, the clerk of the court in which the judgment is rendered 273
shall deliver the entire record in the case to the appellate 274
court. 275

(2) Whenever the court or a panel of three judges imposes a 276
sentence of death for an offense committed on or after January 1, 277
1995, the clerk of the court in which the judgment is rendered 278
shall deliver the entire record in the case to the supreme court. 279

Sec. 2929.06. (A) If ~~the~~ a sentence of death ~~that is~~ imposed 280
upon an offender is set aside, nullified, or vacated upon appeal 281
because the court of appeals, in a case in which a sentence of 282
death was imposed for an offense committed before January 1, 1995, 283
or the supreme court, in cases in which the supreme court reviews 284
the sentence upon appeal, could not affirm the sentence of death 285
under the standards imposed by section 2929.05 of the Revised 286
Code, is set aside, nullified, or vacated upon appeal for the sole 287
reason that the statutory procedure for imposing the sentence of 288
death that is set forth in sections 2929.03 and 2929.04 of the 289
Revised Code is unconstitutional, ~~or~~ is set aside, nullified, or 290
vacated pursuant to division (C) of section 2929.05 of the Revised 291
Code, or is set aside, nullified, or vacated because a court has 292

determined that the offender is mentally retarded under standards 293
set forth in decisions of the supreme court of this state or the 294
United States supreme court, the trial court that sentenced the 295
offender shall conduct a hearing to resentence the offender. At 296
the resentencing hearing, the court shall impose ~~one of the~~ 297
~~following sentences upon the offender:~~ 298

~~(1) Except as provided in division (A)(2) of this section,~~ 299
~~life imprisonment without parole, life imprisonment with parole~~ 300
~~eligibility after serving twenty five full years of imprisonment,~~ 301
~~or life imprisonment with parole eligibility after serving thirty~~ 302
~~full years of imprisonment:~~ 303

~~(2) If the sentence of death was imposed for an aggravated~~ 304
~~murder committed on or after January 1, 1997, and if the offender~~ 305
~~also was convicted of or pleaded guilty to a sexual motivation~~ 306
~~specification and a sexually violent predator specification that~~ 307
~~were included in the indictment, count in the indictment, or~~ 308
~~information that charged the aggravated murder, life imprisonment~~ 309
~~without parole that shall be served pursuant to upon the offender~~ 310
~~a sentence of life imprisonment that is determined as specified in~~ 311
~~this division. The sentences of life imprisonment that are~~ 312
~~available at the hearing, and from which the court shall impose~~ 313
~~sentence, shall be the same sentences of life imprisonment that~~ 314
~~were available under division (D) of section 2929.03 or under~~ 315
~~section 2909.24 of the Revised Code at the time the offender~~ 316
~~committed the offense for which the sentence of death was imposed.~~ 317
Nothing in this division regarding the resentencing of an offender 318
shall affect the operation of section 2971.03 of the Revised Code. 319

~~(B) If the Whenever any court of this state or any federal~~ 320
~~court sets aside, nullifies, or vacates a sentence of death that~~ 321
~~is imposed upon an offender is vacated upon appeal because of~~ 322
error that occurred in the sentencing phase of the trial and if 323
division (A) of this section does not apply, the trial court that 324

sentenced the offender shall conduct a new hearing to resentence 325
the offender. If the offender was tried by a jury, the trial court 326
shall impanel a new jury for the hearing. If the offender was 327
tried by a panel of three judges, that panel or, if necessary, a 328
new panel of three judges shall conduct the hearing. At the 329
hearing, the court shall follow the procedure set forth in 330
division (D) of section 2929.03 of the Revised Code in determining 331
whether to impose upon the offender a sentence of death, or a 332
sentence of life imprisonment without parole, life imprisonment 333
with parole eligibility after serving twenty five full years of 334
imprisonment, or life imprisonment with parole eligibility after 335
serving thirty full years of imprisonment. If, pursuant to that 336
procedure, the court determines that it will impose a sentence of 337
life imprisonment, the sentences of life imprisonment that are 338
available at the hearing, and from which the court shall impose 339
sentence, shall be the same sentences of life imprisonment that 340
were available under division (D) of section 2929.03 or under 341
section 2909.24 of the Revised Code at the time the offender 342
committed the offense for which the sentence of death was imposed. 343

(C) If ~~the~~ a sentence of life imprisonment without parole 344
~~that is~~ imposed upon an offender pursuant to section 2929.021 or 345
2929.03 of the Revised Code is set aside, nullified, or vacated 346
~~upon appeal~~ for the sole reason that the statutory procedure for 347
imposing the sentence of life imprisonment without parole that is 348
set forth in sections 2929.03 and 2929.04 of the Revised Code is 349
unconstitutional, the trial court that sentenced the offender 350
shall conduct a hearing to resentence the offender to life 351
imprisonment with parole eligibility after serving twenty-five 352
full years of imprisonment or to life imprisonment with parole 353
eligibility after serving thirty full years of imprisonment. 354

(D) Nothing in this section limits or restricts the rights of 355
the state to appeal any order setting aside, nullifying, or 356

vacating a conviction or sentence of death, when an appeal of that nature otherwise would be available.

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(E) This section, as amended by H.B. 184 of the 125th General Assembly, shall apply to all offenders who have been sentenced to death for an aggravated murder that was committed on or after October 19, 1981, or for terrorism that was committed on or after May 15, 2002. This section, as amended by H.B. 184 of the 125th general assembly, shall apply equally to all such offenders sentenced to death prior to, on, or after the effective date of that act, including offenders who, on the effective date of that act, are challenging their sentence of death and offenders whose sentence of death has been set aside, nullified, or vacated by any court of this state or any federal court but who, as of the effective date of that act, have not yet been resentenced.

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Section 2. That existing sections 2929.03 and 2929.06 of the Revised Code are hereby repealed.

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

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Section 4. If any provision of this act, any provision of any section in this act, or the application of any such provision to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of other provisions of this act, other sections in this act, other applications of the

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| provision in question, or related sections that can be given | 387 |
| effect without the invalid provision or section, and to this end | 388 |
| the provisions are severable. | 389 |