

As Reported by the House Criminal Justice Committee

125th General Assembly

Regular Session

2003-2004

H. B. No. 184

**Representatives Schmidt, McGregor, Aslanides, Schaffer, Schneider,
Raussen, Gilb, Collier, Willamowski, Latta, D. Evans**

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:

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

Sec. 2929.03. (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 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;	208 209
(iii) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.	210 211
(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.	212 213 214 215 216 217
(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:	218 219 220 221 222 223 224 225 226
(1) Except as provided in division (E)(2) of this section, one of the following:	227 228
(a) Life imprisonment without parole;	229
(b) Life imprisonment with parole eligibility after serving twenty-five full years of imprisonment;	230 231
(c) Life imprisonment with parole eligibility after serving thirty full years of imprisonment.	232 233
(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,	234 235 236 237

life imprisonment without parole that shall be served pursuant to 238
section 2971.03 of the Revised Code. 239

(F) The court or the panel of three judges, when it imposes 240
sentence of death, shall state in a separate opinion its specific 241
findings as to the existence of any of the mitigating factors set 242
forth in division (B) of section 2929.04 of the Revised Code, the 243
existence of any other mitigating factors, the aggravating 244
circumstances the offender was found guilty of committing, and the 245
reasons why the aggravating circumstances the offender was found 246
guilty of committing were sufficient to outweigh the mitigating 247
factors. The court or panel, when it imposes life imprisonment 248
under division (D) of this section, shall state in a separate 249
opinion its specific findings of which of the mitigating factors 250
set forth in division (B) of section 2929.04 of the Revised Code 251
it found to exist, what other mitigating factors it found to 252
exist, what aggravating circumstances the offender was found 253
guilty of committing, and why it could not find that these 254
aggravating circumstances were sufficient to outweigh the 255
mitigating factors. For cases in which a sentence of death is 256
imposed for an offense committed before January 1, 1995, the court 257
or panel shall file the opinion required to be prepared by this 258
division with the clerk of the appropriate court of appeals and 259
with the clerk of the supreme court within fifteen days after the 260
court or panel imposes sentence. For cases in which a sentence of 261
death is imposed for an offense committed on or after January 1, 262
1995, the court or panel shall file the opinion required to be 263
prepared by this division with the clerk of the supreme court 264
within fifteen days after the court or panel imposes sentence. The 265
judgment in a case in which a sentencing hearing is held pursuant 266
to this section is not final until the opinion is filed. 267

(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