

**As Reported by the Senate Judiciary Committee**

**125th General Assembly**

**Regular Session**

**2003-2004**

**Sub. H. B. No. 184**

**Representatives Schmidt, McGregor, Aslanides, Schaffer, Schneider,  
Raussen, Gilb, Collier, Willamowski, Latta, D. Evans, Callender, Carmichael,  
Cates, Chandler, Clancy, Daniels, Domenick, C. Evans, Flowers, Grendell,  
Hartnett, Hoops, Hughes, Jerse, Jolivette, Martin, Niehaus, Otterman,  
T. Patton, Raga, Reidelbach, Schlichter, Seaver, Seitz, Sferra, G. Smith,  
J. Stewart, Taylor, Wagner, Webster, Widener, Widowfield  
Senator Goodman**

**—**

**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 44  
charge and, if guilty of the principal charge, whether the 45

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.

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(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:

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(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:

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(i) Life imprisonment without parole;

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

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

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(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.

(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:

(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.

(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.

(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:

(i) By the panel of three judges that tried the offender upon

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 170

finding, the jury shall recommend that the offender be sentenced 171  
to one of the following: 172

(a) Except as provided in division (D)(2)(b) of this section, 173  
to life imprisonment without parole, life imprisonment with parole 174  
eligibility after serving twenty-five full years of imprisonment, 175  
or life imprisonment with parole eligibility after serving thirty 176  
full years of imprisonment; 177

(b) If the offender also is convicted of or pleads guilty to 178  
a sexual motivation specification and a sexually violent predator 179  
specification that are included in the indictment, count in the 180  
indictment, or information that charged the aggravated murder, to 181  
life imprisonment without parole. 182

If the trial jury recommends that the offender be sentenced 183  
to life imprisonment without parole, life imprisonment with parole 184  
eligibility after serving twenty-five full years of imprisonment, 185  
or life imprisonment with parole eligibility after serving thirty 186  
full years of imprisonment, the court shall impose the sentence 187  
recommended by the jury upon the offender. If the sentence is a 188  
sentence of life imprisonment without parole imposed under 189  
division (D)(2)(b) of this section, the sentence shall be served 190  
pursuant to section 2971.03 of the Revised Code. If the trial jury 191  
recommends that the sentence of death be imposed upon the 192  
offender, the court shall proceed to impose sentence pursuant to 193  
division (D)(3) of this section. 194

(3) Upon consideration of the relevant evidence raised at 195  
trial, the testimony, other evidence, statement of the offender, 196  
arguments of counsel, and, if applicable, the reports submitted to 197  
the court pursuant to division (D)(1) of this section, if, after 198  
receiving pursuant to division (D)(2) of this section the trial 199  
jury's recommendation that the sentence of death be imposed, the 200  
court finds, by proof beyond a reasonable doubt, or if the panel 201

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,  
one of the following:

(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 division with the clerk of the appropriate court of appeals and	243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262

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  
a sentence of death for an offense committed before January 1,  
1995, the clerk of the court in which the judgment is rendered  
shall deliver the entire record in the case to the appellate  
court.

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

**Sec. 2929.06.** (A) If ~~the a~~ sentence of death ~~that is~~ imposed  
upon an offender is set aside, nullified, or 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 set aside, nullified, or 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 set aside, nullified, or  
vacated pursuant to division (C) of section 2929.05 of the Revised  
Code, or is set aside, nullified, or vacated because a court has  
determined that the offender is mentally retarded under standards

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 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, or a sentence of 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. If, pursuant to that procedure, the court determines that it will impose a sentence of life imprisonment, the sentences of life imprisonment that are available at the hearing, and from which the court shall impose sentence, shall be the same sentences of life imprisonment that were available under division (D) of section 2929.03 or under section 2909.24 of the Revised Code at the time the offender committed the offense for which the sentence of death was imposed.

(C) If ~~the~~ a 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 set aside, nullified, or 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 imprisonment.

(D) Nothing in this section limits or restricts the rights of the state to appeal any order setting aside, nullifying, or vacating a conviction or sentence of death, when an appeal of that

nature otherwise would be available. 358

(E) This section, as amended by H.B. 184 of the 125th General 359  
Assembly, shall apply to all offenders who have been sentenced to 360  
death for an aggravated murder that was committed on or after 361  
October 19, 1981, or for terrorism that was committed on or after 362  
May 15, 2002. This section, as amended by H.B. 184 of the 125th 363  
general assembly, shall apply equally to all such offenders 364  
sentenced to death prior to, on, or after the effective date of 365  
that act, including offenders who, on the effective date of that 366  
act, are challenging their sentence of death and offenders whose 367  
sentence of death has been set aside, nullified, or vacated by any 368  
court of this state or any federal court but who, as of the 369  
effective date of that act, have not yet been resentenced. 370

**Section 2.** That existing sections 2929.03 and 2929.06 of the 371  
Revised Code are hereby repealed. 372

**Section 3.** Section 2929.03 of the Revised Code is presented 373  
in this act as a composite of the section as amended by both Am. 374  
Sub. H.B. 180 and Am. Sub. S.B. 269 of the 121st General Assembly. 375  
The General Assembly, applying the principle stated in division 376  
(B) of section 1.52 of the Revised Code that amendments are to be 377  
harmonized if reasonably capable of simultaneous operation, finds 378  
that the composite is the resulting version of the section in 379  
effect prior to the effective date of the section as presented in 380  
this act. 381

**Section 4.** If any provision of this act, any provision of any 382  
section in this act, or the application of any such provision to 383  
any person or circumstances is held invalid, the invalidity does 384  
not affect other provisions or applications of other provisions of 385  
this act, other sections in this act, other applications of the 386  
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