

**As Introduced**

**127th General Assembly  
Regular Session  
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**H. B. No. 265**

**Representative Fende**

**Cosponsors: Representatives Batchelder, Evans, Harwood, Huffman,  
Luckie, Miller, Okey, Skindell, Stebelton, Ujvagi, Yuko, Zehringer**

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**A B I L L**

To amend sections 2903.01, 2903.11, 2903.12, 2903.13, 1  
2903.21, and 2929.04 and to enact section 2903.23 2  
of the Revised Code to increase the penalties for 3  
certain offenses when a judge or magistrate is the 4  
victim, to prohibit a person from threatening a 5  
judge or magistrate, and to make the killing of a 6  
judge or magistrate an aggravating circumstance 7  
for the imposition of the death penalty for 8  
aggravated murder. 9

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

**Section 1.** That sections 2903.01, 2903.11, 2903.12, 2903.13, 10  
2903.21, and 2929.04 be amended and section 2903.23 of the Revised 11  
Code be enacted to read as follows: 12

**Sec. 2903.01.** (A) No person shall purposely, and with prior 13  
calculation and design, cause the death of another or the unlawful 14  
termination of another's pregnancy. 15

(B) No person shall purposely cause the death of another or 16  
the unlawful termination of another's pregnancy while committing 17  
or attempting to commit, or while fleeing immediately after 18

committing or attempting to commit, kidnapping, rape, aggravated 19  
arson, arson, aggravated robbery, robbery, aggravated burglary, 20  
burglary, terrorism, or escape. 21

(C) No person shall purposely cause the death of another who 22  
is under thirteen years of age at the time of the commission of 23  
the offense. 24

(D) No person who is under detention as a result of having 25  
been found guilty of or having pleaded guilty to a felony or who 26  
breaks that detention shall purposely cause the death of another. 27

(E) No person shall purposely cause the death of a judge, 28  
magistrate, or law enforcement officer whom the offender knows or 29  
has reasonable cause to know is a judge, magistrate, or law 30  
enforcement officer when either of the following applies: 31

(1) The victim, at the time of the commission of the offense, 32  
is engaged in the victim's duties. 33

(2) It is the offender's specific purpose to kill a judge, 34  
magistrate, or law enforcement officer. 35

(F) Whoever violates this section is guilty of aggravated 36  
murder, and shall be punished as provided in section 2929.02 of 37  
the Revised Code. 38

(G) As used in this section: 39

(1) "Detention" has the same meaning as in section 2921.01 of 40  
the Revised Code. 41

(2) "Law enforcement officer" has the same meaning as in 42  
section 2911.01 of the Revised Code. 43

(3) "Judge" means a judge of a court created under the 44  
constitution or statutes of this state or of a United States court 45  
located in this state. 46

(4) "Magistrate" means a magistrate of a court created under 47  
the constitution or statutes of this state or of a United States 48

court located in this state. 49

**Sec. 2903.11.** (A) No person shall knowingly do either of the 50  
following: 51

(1) Cause serious physical harm to another or to another's 52  
unborn; 53

(2) Cause or attempt to cause physical harm to another or to 54  
another's unborn by means of a deadly weapon or dangerous 55  
ordnance. 56

(B) No person, with knowledge that the person has tested 57  
positive as a carrier of a virus that causes acquired 58  
immunodeficiency syndrome, shall knowingly do any of the 59  
following: 60

(1) Engage in sexual conduct with another person without 61  
disclosing that knowledge to the other person prior to engaging in 62  
the sexual conduct; 63

(2) Engage in sexual conduct with a person whom the offender 64  
knows or has reasonable cause to believe lacks the mental capacity 65  
to appreciate the significance of the knowledge that the offender 66  
has tested positive as a carrier of a virus that causes acquired 67  
immunodeficiency syndrome; 68

(3) Engage in sexual conduct with a person under eighteen 69  
years of age who is not the spouse of the offender. 70

(C) The prosecution of a person under this section does not 71  
preclude prosecution of that person under section 2907.02 of the 72  
Revised Code. 73

(D)(1) Whoever violates this section is guilty of felonious 74  
assault, a felony of the second degree. If the victim of a 75  
violation of division (A) of this section is a judge, magistrate, 76  
peace officer, or ~~an~~ investigator of the bureau of criminal 77  
identification and investigation, felonious assault is a felony of 78

the first degree. If the victim of the offense is a judge, 79  
magistrate, peace officer, or ~~an~~ investigator of the bureau of 80  
criminal identification and investigation, and if the victim 81  
suffered serious physical harm as a result of the commission of 82  
the offense, felonious assault is a felony of the first degree, 83  
and the court, pursuant to division (F) of section 2929.13 of the 84  
Revised Code, shall impose as a mandatory prison term one of the 85  
prison terms prescribed for a felony of the first degree. 86

(2) In addition to any other sanctions imposed pursuant to 87  
division (D)(1) of this section for felonious assault committed in 88  
violation of division (A)(2) of this section, if the deadly weapon 89  
used in the commission of the violation is a motor vehicle, the 90  
court shall impose upon the offender a class two suspension of the 91  
offender's driver's license, commercial driver's license, 92  
temporary instruction permit, probationary license, or nonresident 93  
operating privilege as specified in division (A)(2) of section 94  
4510.02 of the Revised Code. 95

(E) As used in this section: 96

(1) "Deadly weapon" and "dangerous ordnance" have the same 97  
meanings as in section 2923.11 of the Revised Code. 98

(2) "Motor vehicle" has the same meaning as in section 99  
4501.01 of the Revised Code. 100

(3) "Peace officer" has the same meaning as in section 101  
2935.01 of the Revised Code. 102

(4) "Sexual conduct" has the same meaning as in section 103  
2907.01 of the Revised Code, except that, as used in this section, 104  
it does not include the insertion of an instrument, apparatus, or 105  
other object that is not a part of the body into the vaginal or 106  
anal opening of another, unless the offender knew at the time of 107  
the insertion that the instrument, apparatus, or other object 108  
carried the offender's bodily fluid. 109

(5) "Investigator of the bureau of criminal identification and investigation" means an investigator of the bureau of criminal identification and investigation who is commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under section 109.541 of the Revised Code.

(6) "Investigator" has the same meaning as in section 109.541 of the Revised Code.

(7) "Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.

**Sec. 2903.12.** (A) No person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code.

(B) Whoever violates this section is guilty of aggravated assault, a felony of the fourth degree. If the victim of the offense is a judge, magistrate, peace officer, or ~~an~~ investigator of the bureau of criminal identification and investigation, aggravated assault is a felony of the third degree. If the victim of the offense is a judge, magistrate, peace officer, or ~~an~~ investigator of the bureau of criminal identification and investigation, and if the victim suffered serious physical harm as a result of the commission of the offense, aggravated assault is a

felony of the third degree, and the court, pursuant to division 140  
(F) of section 2929.13 of the Revised Code, shall impose as a 141  
mandatory prison term one of the prison terms prescribed for a 142  
felony of the third degree. 143

(C) As used in this section: 144

(1) "Investigator of the bureau of criminal identification 145  
and investigation" has the same meaning as in section 2903.11 of 146  
the Revised Code. 147

(2) "Peace officer" has the same meaning as in section 148  
2935.01 of the Revised Code. 149

(3) "Judge" and "magistrate" have the same meanings as in 150  
section 2903.01 of the Revised Code. 151

**Sec. 2903.13.** (A) No person shall knowingly cause or attempt 152  
to cause physical harm to another or to another's unborn. 153

(B) No person shall recklessly cause serious physical harm to 154  
another or to another's unborn. 155

(C) Whoever violates this section is guilty of assault. 156  
Except as otherwise provided in division (C)(1), (2), (3), (4), or 157  
(5) of this section, assault is a misdemeanor of the first degree. 158

(1) Except as otherwise provided in this division, if the 159  
offense is committed by a caretaker against a functionally 160  
impaired person under the caretaker's care, assault is a felony of 161  
the fourth degree. If the offense is committed by a caretaker 162  
against a functionally impaired person under the caretaker's care, 163  
if the offender previously has been convicted of or pleaded guilty 164  
to a violation of this section or section 2903.11 or 2903.16 of 165  
the Revised Code, and if in relation to the previous conviction 166  
the offender was a caretaker and the victim was a functionally 167  
impaired person under the offender's care, assault is a felony of 168  
the third degree. 169

(2) If the offense is committed in any of the following 170  
circumstances, assault is a felony of the fifth degree: 171

(a) The offense occurs in or on the grounds of a state 172  
correctional institution or an institution of the department of 173  
youth services, the victim of the offense is an employee of the 174  
department of rehabilitation and correction, the department of 175  
youth services, or a probation department or is on the premises of 176  
the particular institution for business purposes or as a visitor, 177  
and the offense is committed by a person incarcerated in the state 178  
correctional institution, by a person institutionalized in the 179  
department of youth services institution pursuant to a commitment 180  
to the department of youth services, by a parolee, by an offender 181  
under transitional control, under a community control sanction, or 182  
on an escorted visit, by a person under post-release control, or 183  
by an offender under any other type of supervision by a government 184  
agency. 185

(b) The offense occurs in or on the grounds of a local 186  
correctional facility, the victim of the offense is an employee of 187  
the local correctional facility or a probation department or is on 188  
the premises of the facility for business purposes or as a 189  
visitor, and the offense is committed by a person who is under 190  
custody in the facility subsequent to the person's arrest for any 191  
crime or delinquent act, subsequent to the person's being charged 192  
with or convicted of any crime, or subsequent to the person's 193  
being alleged to be or adjudicated a delinquent child. 194

(c) The offense occurs off the grounds of a state 195  
correctional institution and off the grounds of an institution of 196  
the department of youth services, the victim of the offense is an 197  
employee of the department of rehabilitation and correction, the 198  
department of youth services, or a probation department, the 199  
offense occurs during the employee's official work hours and while 200  
the employee is engaged in official work responsibilities, and the 201

offense is committed by a person incarcerated in a state 202  
correctional institution or institutionalized in the department of 203  
youth services who temporarily is outside of the institution for 204  
any purpose, by a parolee, by an offender under transitional 205  
control, under a community control sanction, or on an escorted 206  
visit, by a person under post-release control, or by an offender 207  
under any other type of supervision by a government agency. 208

(d) The offense occurs off the grounds of a local 209  
correctional facility, the victim of the offense is an employee of 210  
the local correctional facility or a probation department, the 211  
offense occurs during the employee's official work hours and while 212  
the employee is engaged in official work responsibilities, and the 213  
offense is committed by a person who is under custody in the 214  
facility subsequent to the person's arrest for any crime or 215  
delinquent act, subsequent to the person being charged with or 216  
convicted of any crime, or subsequent to the person being alleged 217  
to be or adjudicated a delinquent child and who temporarily is 218  
outside of the facility for any purpose or by a parolee, by an 219  
offender under transitional control, under a community control 220  
sanction, or on an escorted visit, by a person under post-release 221  
control, or by an offender under any other type of supervision by 222  
a government agency. 223

(e) The victim of the offense is a school teacher or 224  
administrator or a school bus operator, and the offense occurs in 225  
a school, on school premises, in a school building, on a school 226  
bus, or while the victim is outside of school premises or a school 227  
bus and is engaged in duties or official responsibilities 228  
associated with the victim's employment or position as a school 229  
teacher or administrator or a school bus operator, including, but 230  
not limited to, driving, accompanying, or chaperoning students at 231  
or on class or field trips, athletic events, or other school 232  
extracurricular activities or functions outside of school 233



premises. 234

(3) If the victim of the offense is a judge, magistrate, 235  
peace officer, or ~~an~~ investigator of the bureau of criminal 236  
identification and investigation, a firefighter, or a person 237  
performing emergency medical service, while in the performance of 238  
their official duties, assault is a felony of the fourth degree. 239

(4) If the victim of the offense is a judge, magistrate, 240  
peace officer, or ~~an~~ investigator of the bureau of criminal 241  
identification and investigation and if the victim suffered 242  
serious physical harm as a result of the commission of the 243  
offense, assault is a felony of the fourth degree, and the court, 244  
pursuant to division (F) of section 2929.13 of the Revised Code, 245  
shall impose as a mandatory prison term one of the prison terms 246  
prescribed for a felony of the fourth degree that is at least 247  
twelve months in duration. 248

(5) If the victim of the offense is an officer or employee of 249  
a public children services agency or a private child placing 250  
agency and the offense relates to the officer's or employee's 251  
performance or anticipated performance of official 252  
responsibilities or duties, assault is either a felony of the 253  
fifth degree or, if the offender previously has been convicted of 254  
or pleaded guilty to an offense of violence, the victim of that 255  
prior offense was an officer or employee of a public children 256  
services agency or private child placing agency, and that prior 257  
offense related to the officer's or employee's performance or 258  
anticipated performance of official responsibilities or duties, a 259  
felony of the fourth degree. 260

(D) As used in this section: 261

(1) "Peace officer" has the same meaning as in section 262  
2935.01 of the Revised Code. 263

(2) "Firefighter" has the same meaning as in section 3937.41 264

of the Revised Code. 265

(3) "Emergency medical service" has the same meaning as in 266  
section 4765.01 of the Revised Code. 267

(4) "Local correctional facility" means a county, 268  
multicounty, municipal, municipal-county, or multicounty-municipal 269  
jail or workhouse, a minimum security jail established under 270  
section 341.23 or 753.21 of the Revised Code, or another county, 271  
multicounty, municipal, municipal-county, or multicounty-municipal 272  
facility used for the custody of persons arrested for any crime or 273  
delinquent act, persons charged with or convicted of any crime, or 274  
persons alleged to be or adjudicated a delinquent child. 275

(5) "Employee of a local correctional facility" means a 276  
person who is an employee of the political subdivision or of one 277  
or more of the affiliated political subdivisions that operates the 278  
local correctional facility and who operates or assists in the 279  
operation of the facility. 280

(6) "School teacher or administrator" means either of the 281  
following: 282

(a) A person who is employed in the public schools of the 283  
state under a contract described in section 3319.08 of the Revised 284  
Code in a position in which the person is required to have a 285  
certificate issued pursuant to sections 3319.22 to 3319.311 of the 286  
Revised Code. 287

(b) A person who is employed by a nonpublic school for which 288  
the state board of education prescribes minimum standards under 289  
section 3301.07 of the Revised Code and who is certificated in 290  
accordance with section 3301.071 of the Revised Code. 291

(7) "Community control sanction" has the same meaning as in 292  
section 2929.01 of the Revised Code. 293

(8) "Escorted visit" means an escorted visit granted under 294

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| section 2967.27 of the Revised Code.   | 295  |
| (9) "Post-release control" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code.  | 296<br>297   |
| (10) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code.   | 298<br>299<br>300  |
| <u>(11) "Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.</u>   | 301<br>302   |
| <b>Sec. 2903.21.</b> (A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.   | 303<br>304<br>305<br>306   |
| (B) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this division, aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is <u>a judge or magistrate or an officer or employee of a public children services agency or a private child placing agency and the offense relates to the judge's, magistrate's, officer's, or employee's performance or anticipated performance of official responsibilities or duties</u> , aggravated menacing is a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was <u>a judge or magistrate or an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the judge's, magistrate's, officer's, or employee's performance or anticipated performance of official responsibilities or duties</u> , a felony of the fourth degree. | 307<br>308<br>309<br>310<br>311<br>312<br>313<br>314<br>315<br>316<br>317<br>318<br>319<br>320<br>321<br>322 |
| <u>(C) As used in this section, "judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.</u>   | 323<br>324   |

Sec. 2903.23. (A) As used in this section: 325

(1) "Immediate family" includes a person's spouse, brothers and sisters of the whole or half blood, children, including adopted children and stepchildren, parents, and grandparents. 326  
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(2) "Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code. 329  
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(B) No person, with intent to influence or interfere with a judge or magistrate in the performance of the judge's or magistrate's official duties or to retaliate against a judge or magistrate for any decision made or action taken in the performance of the judge's or magistrate's official duties, shall knowingly threaten a judge or magistrate with physical harm to the person or property of the judge or magistrate, the judge's or magistrate's unborn, or a member of the judge's or magistrate's immediate family. 331  
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(C) Whoever violates division (B) of this section is guilty of threatening a judge or magistrate, a felony of the fifth degree. 340  
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**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: 343  
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(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 348  
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has been nominated for election according to law, if the person 355  
has filed a petition or petitions according to law to have the 356  
person's name placed on the ballot in a primary or general 357  
election, or if the person campaigns as a write-in candidate in a 358  
primary or general election. 359

(2) The offense was committed for hire. 360

(3) The offense was committed for the purpose of escaping 361  
detection, apprehension, trial, or punishment for another offense 362  
committed by the offender. 363

(4) The offense was committed while the offender was under 364  
detention or while the offender was at large after having broken 365  
detention. As used in division (A)(4) of this section, "detention" 366  
has the same meaning as in section 2921.01 of the Revised Code, 367  
except that detention does not include hospitalization, 368  
institutionalization, or confinement in a mental health facility 369  
or mental retardation and developmentally disabled facility unless 370  
at the time of the commission of the offense either of the 371  
following circumstances apply: 372

(a) The offender was in the facility as a result of being 373  
charged with a violation of a section of the Revised Code. 374

(b) The offender was under detention as a result of being 375  
convicted of or pleading guilty to a violation of a section of the 376  
Revised Code. 377

(5) Prior to the offense at bar, the offender was convicted 378  
of an offense an essential element of which was the purposeful 379  
killing of or attempt to kill another, or the offense at bar was 380  
part of a course of conduct involving the purposeful killing of or 381  
attempt to kill two or more persons by the offender. 382

(6) The victim of the offense was a law enforcement officer, 383  
as defined in section 2911.01 of the Revised Code, or a judge or 384  
magistrate, as defined in section 2903.01 of the Revised Code, 385

whom the offender had reasonable cause to know or knew to be a law enforcement officer or a judge or magistrate 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 or a judge or magistrate 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.

(10) The offense was committed while the offender was committing, attempting to commit, or fleeing immediately after committing or attempting to commit terrorism.

(B) If one or more of the aggravating circumstances listed in 417  
division (A) of this section is specified in the indictment or 418  
count in the indictment and proved beyond a reasonable doubt, and 419  
if the offender did not raise the matter of age pursuant to 420  
section 2929.023 of the Revised Code or if the offender, after 421  
raising the matter of age, was found at trial to have been 422  
eighteen years of age or older at the time of the commission of 423  
the offense, the court, trial jury, or panel of three judges shall 424  
consider, and weigh against the aggravating circumstances proved 425  
beyond a reasonable doubt, the nature and circumstances of the 426  
offense, the history, character, and background of the offender, 427  
and all of the following factors: 428

(1) Whether the victim of the offense induced or facilitated 429  
it; 430

(2) Whether it is unlikely that the offense would have been 431  
committed, but for the fact that the offender was under duress, 432  
coercion, or strong provocation; 433

(3) Whether, at the time of committing the offense, the 434  
offender, because of a mental disease or defect, lacked 435  
substantial capacity to appreciate the criminality of the 436  
offender's conduct or to conform the offender's conduct to the 437  
requirements of the law; 438

(4) The youth of the offender; 439

(5) The offender's lack of a significant history of prior 440  
criminal convictions and delinquency adjudications; 441

(6) If the offender was a participant in the offense but not 442  
the principal offender, the degree of the offender's participation 443  
in the offense and the degree of the offender's participation in 444  
the acts that led to the death of the victim; 445

(7) Any other factors that are relevant to the issue of 446  
whether the offender should be sentenced to death. 447

(C) The defendant shall be given great latitude in the 448  
presentation of evidence of the factors listed in division (B) of 449  
this section and of any other factors in mitigation of the 450  
imposition of the sentence of death. 451

The existence of any of the mitigating factors listed in 452  
division (B) of this section does not preclude the imposition of a 453  
sentence of death on the offender but shall be weighed pursuant to 454  
divisions (D)(2) and (3) of section 2929.03 of the Revised Code by 455  
the trial court, trial jury, or the panel of three judges against 456  
the aggravating circumstances the offender was found guilty of 457  
committing. 458

**Section 2.** That existing sections 2903.01, 2903.11, 2903.12, 459  
2903.13, 2903.21, and 2929.04 of the Revised Code are hereby 460  
repealed. 461

**Section 3.** Section 2903.11 of the Revised Code is presented 462  
in this act as a composite of the section as amended by both Sub. 463  
H.B. 347 and Am. Sub. H.B. 461 of the 126th General Assembly. The 464  
General Assembly, applying the principle stated in division (B) of 465  
section 1.52 of the Revised Code that amendments are to be 466  
harmonized if reasonably capable of simultaneous operation, finds 467  
that the composite is the resulting version of the section in 468  
effect prior to the effective date of the section as presented in 469  
this act. 470