

As Introduced

**127th General Assembly
Regular Session
2007-2008**

S. B. No. 100

Senator Austria

**Cosponsors: Senators Carey, Clancy, Gardner, Goodman, Grendell, Harris,
Padgett, Schaffer**

—

A BILL

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 section 4765.01 of the Revised Code.	266 267
(4) "Local correctional facility" means a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail established under section 341.23 or 753.21 of the Revised Code, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.	268 269 270 271 272 273 274 275
(5) "Employee of a local correctional facility" means a person who is an employee of the political subdivision or of one or more of the affiliated political subdivisions that operates the local correctional facility and who operates or assists in the operation of the facility.	276 277 278 279 280
(6) "School teacher or administrator" means either of the following:	281 282
(a) A person who is employed in the public schools of the state under a contract described in section 3319.08 of the Revised Code in a position in which the person is required to have a certificate issued pursuant to sections 3319.22 to 3319.311 of the Revised Code.	283 284 285 286 287
(b) A person who is employed by a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and who is certificated in accordance with section 3301.071 of the Revised Code.	288 289 290 291
(7) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.	292 293
(8) "Escorted visit" means an escorted visit granted under	294

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.	296 297
(10) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code.	298 299 300
<u>(11) "Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.</u>	301 302
Sec. 2903.21. (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.	303 304 305 306
(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.	307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322
<u>(C) As used in this section, "judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.</u>	323 324

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