

As Passed by the House

**128th General Assembly
Regular Session
2009-2010**

Sub. H. B. No. 103

Representatives Fende, Harwood

**Cosponsors: Representatives Zehringer, Murray, Huffman, Ujvagi, Uecker,
Evans, Letson, Chandler, Okey, Luckie, Williams, S., Yuko, Domenick,
Slesnick, Adams, R., Bacon, Batchelder, Blessing, Bolon, Boyd, Bulp,
Celeste, Combs, Daniels, DeBose, DeGeeter, Dyer, Garland, Garrison, Goyal,
Grossman, Hackett, Harris, Heard, Hite, Lundy, Mallory, Mecklenborg, Sayre,
Szollosi, Weddington, Williams, B., Winburn**

—

A B I L L

To amend sections 149.43, 2903.01, 2903.11, 2903.12, 1
2903.13, 2903.21, and 2929.04 and to enact section 2
2903.23 of the Revised Code to provide that 3
residential and familial information of a 4
probation officer is not a public record, to 5
increase the penalties for certain offenses when a 6
judge or magistrate is the victim, to prohibit a 7
person from threatening a judge or magistrate, and 8
to make the killing of a judge or magistrate an 9
aggravating circumstance for the imposition of the 10
death penalty for aggravated murder. 11

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

Section 1. That sections 149.43, 2903.01, 2903.11, 2903.12, 12
2903.13, 2903.21, and 2929.04 be amended and section 2903.23 of 13
the Revised Code be enacted to read as follows: 14

Sec. 149.43. (A) As used in this section:	15
(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:	16 17 18 19 20 21 22
(a) Medical records;	23
(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;	24 25 26
(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;	27 28 29
(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;	30 31 32
(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;	33 34 35 36 37 38
(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;	39 40 41
(g) Trial preparation records;	42
(h) Confidential law enforcement investigatory records;	43

(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;	44 45
(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	46 47
(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;	48 49 50 51
(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;	52 53 54 55
(m) Intellectual property records;	56
(n) Donor profile records;	57
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	58 59
(p) Peace officer, parole officer, <u>probation officer</u> , prosecuting attorney, assistant prosecuting attorney, correctional employee, youth services employee, firefighter, or EMT residential and familial information;	60 61 62 63
(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	64 65 66 67 68
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	69 70
(s) Records provided to, statements made by review board members during meetings of, and all work products of a child fatality review board acting under sections 307.621 to 307.629 of	71 72 73

the Revised Code, other than the report prepared pursuant to	74
section 307.626 of the Revised Code;	75
(t) Records provided to and statements made by the executive	76
director of a public children services agency or a prosecuting	77
attorney acting pursuant to section 5153.171 of the Revised Code	78
other than the information released under that section;	79
(u) Test materials, examinations, or evaluation tools used in	80
an examination for licensure as a nursing home administrator that	81
the board of examiners of nursing home administrators administers	82
under section 4751.04 of the Revised Code or contracts under that	83
section with a private or government entity to administer;	84
(v) Records the release of which is prohibited by state or	85
federal law;	86
(w) Proprietary information of or relating to any person that	87
is submitted to or compiled by the Ohio venture capital authority	88
created under section 150.01 of the Revised Code;	89
(x) Information reported and evaluations conducted pursuant	90
to section 3701.072 of the Revised Code;	91
(y) Financial statements and data any person submits for any	92
purpose to the Ohio housing finance agency or the controlling	93
board in connection with applying for, receiving, or accounting	94
for financial assistance from the agency, and information that	95
identifies any individual who benefits directly or indirectly from	96
financial assistance from the agency;	97
(z) Records listed in section 5101.29 of the Revised Code;	98
(aa) Discharges recorded with a county recorder under section	99
317.24 of the Revised Code, as specified in division (B)(2) of	100
that section.	101
(2) "Confidential law enforcement investigatory record" means	102
any record that pertains to a law enforcement matter of a	103

criminal, quasi-criminal, civil, or administrative nature, but 104
only to the extent that the release of the record would create a 105
high probability of disclosure of any of the following: 106

(a) The identity of a suspect who has not been charged with 107
the offense to which the record pertains, or of an information 108
source or witness to whom confidentiality has been reasonably 109
promised; 110

(b) Information provided by an information source or witness 111
to whom confidentiality has been reasonably promised, which 112
information would reasonably tend to disclose the source's or 113
witness's identity; 114

(c) Specific confidential investigatory techniques or 115
procedures or specific investigatory work product; 116

(d) Information that would endanger the life or physical 117
safety of law enforcement personnel, a crime victim, a witness, or 118
a confidential information source. 119

(3) "Medical record" means any document or combination of 120
documents, except births, deaths, and the fact of admission to or 121
discharge from a hospital, that pertains to the medical history, 122
diagnosis, prognosis, or medical condition of a patient and that 123
is generated and maintained in the process of medical treatment. 124

(4) "Trial preparation record" means any record that contains 125
information that is specifically compiled in reasonable 126
anticipation of, or in defense of, a civil or criminal action or 127
proceeding, including the independent thought processes and 128
personal trial preparation of an attorney. 129

(5) "Intellectual property record" means a record, other than 130
a financial or administrative record, that is produced or 131
collected by or for faculty or staff of a state institution of 132
higher learning in the conduct of or as a result of study or 133
research on an educational, commercial, scientific, artistic, 134

technical, or scholarly issue, regardless of whether the study or 135
research was sponsored by the institution alone or in conjunction 136
with a governmental body or private concern, and that has not been 137
publicly released, published, or patented. 138

(6) "Donor profile record" means all records about donors or 139
potential donors to a public institution of higher education 140
except the names and reported addresses of the actual donors and 141
the date, amount, and conditions of the actual donation. 142

(7) "Peace officer, parole officer, probation officer, 143
prosecuting attorney, assistant prosecuting attorney, correctional 144
employee, youth services employee, firefighter, or EMT residential 145
and familial information" means any information that discloses any 146
of the following about a peace officer, parole officer, probation 147
officer, prosecuting attorney, assistant prosecuting attorney, 148
correctional employee, youth services employee, firefighter, or 149
EMT: 150

(a) The address of the actual personal residence of a peace 151
officer, parole officer, probation officer, assistant prosecuting 152
attorney, correctional employee, youth services employee, 153
firefighter, or EMT, except for the state or political subdivision 154
in which the peace officer, parole officer, probation officer, 155
assistant prosecuting attorney, correctional employee, youth 156
services employee, firefighter, or EMT resides; 157

(b) Information compiled from referral to or participation in 158
an employee assistance program; 159

(c) The social security number, the residential telephone 160
number, any bank account, debit card, charge card, or credit card 161
number, or the emergency telephone number of, or any medical 162
information pertaining to, a peace officer, parole officer, 163
probation officer, prosecuting attorney, assistant prosecuting 164
attorney, correctional employee, youth services employee, 165

firefighter, or EMT; 166

(d) The name of any beneficiary of employment benefits, 167
including, but not limited to, life insurance benefits, provided 168
to a peace officer, parole officer, probation officer, prosecuting 169
attorney, assistant prosecuting attorney, correctional employee, 170
youth services employee, firefighter, or EMT by the peace 171
officer's, parole officer's, probation officer's, prosecuting 172
attorney's, assistant prosecuting attorney's, correctional 173
employee's, youth services employee's, firefighter's, or EMT's 174
employer; 175

(e) The identity and amount of any charitable or employment 176
benefit deduction made by the peace officer's, parole officer's, 177
probation officer's, prosecuting attorney's, assistant prosecuting 178
attorney's, correctional employee's, youth services employee's, 179
firefighter's, or EMT's employer from the peace officer's, parole 180
officer's, probation officer's, prosecuting attorney's, assistant 181
prosecuting attorney's, correctional employee's, youth services 182
employee's, firefighter's, or EMT's compensation unless the amount 183
of the deduction is required by state or federal law; 184

(f) The name, the residential address, the name of the 185
employer, the address of the employer, the social security number, 186
the residential telephone number, any bank account, debit card, 187
charge card, or credit card number, or the emergency telephone 188
number of the spouse, a former spouse, or any child of a peace 189
officer, parole officer, probation officer, prosecuting attorney, 190
assistant prosecuting attorney, correctional employee, youth 191
services employee, firefighter, or EMT; 192

(g) A photograph of a peace officer who holds a position or 193
has an assignment that may include undercover or plain clothes 194
positions or assignments as determined by the peace officer's 195
appointing authority. 196

As used in divisions (A)(7) and (B)(9) of this section, 197
"peace officer" has the same meaning as in section 109.71 of the 198
Revised Code and also includes the superintendent and troopers of 199
the state highway patrol; it does not include the sheriff of a 200
county or a supervisory employee who, in the absence of the 201
sheriff, is authorized to stand in for, exercise the authority of, 202
and perform the duties of the sheriff. 203

As used in divisions (A)(7) and (B)(5) of this section, 204
"correctional employee" means any employee of the department of 205
rehabilitation and correction who in the course of performing the 206
employee's job duties has or has had contact with inmates and 207
persons under supervision. 208

As used in divisions (A)(7) and (B)(5) of this section, 209
"youth services employee" means any employee of the department of 210
youth services who in the course of performing the employee's job 211
duties has or has had contact with children committed to the 212
custody of the department of youth services. 213

As used in divisions (A)(7) and (B)(9) of this section, 214
"firefighter" means any regular, paid or volunteer, member of a 215
lawfully constituted fire department of a municipal corporation, 216
township, fire district, or village. 217

As used in divisions (A)(7) and (B)(9) of this section, "EMT" 218
means EMTs-basic, EMTs-I, and paramedics that provide emergency 219
medical services for a public emergency medical service 220
organization. "Emergency medical service organization," 221
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as in 222
section 4765.01 of the Revised Code. 223

(8) "Information pertaining to the recreational activities of 224
a person under the age of eighteen" means information that is kept 225
in the ordinary course of business by a public office, that 226
pertains to the recreational activities of a person under the age 227

of eighteen years, and that discloses any of the following:	228
(a) The address or telephone number of a person under the age	229
of eighteen or the address or telephone number of that person's	230
parent, guardian, custodian, or emergency contact person;	231
(b) The social security number, birth date, or photographic	232
image of a person under the age of eighteen;	233
(c) Any medical record, history, or information pertaining to	234
a person under the age of eighteen;	235
(d) Any additional information sought or required about a	236
person under the age of eighteen for the purpose of allowing that	237
person to participate in any recreational activity conducted or	238
sponsored by a public office or to use or obtain admission	239
privileges to any recreational facility owned or operated by a	240
public office.	241
(9) "Community control sanction" has the same meaning as in	242
section 2929.01 of the Revised Code.	243
(10) "Post-release control sanction" has the same meaning as	244
in section 2967.01 of the Revised Code.	245
(11) "Redaction" means obscuring or deleting any information	246
that is exempt from the duty to permit public inspection or	247
copying from an item that otherwise meets the definition of a	248
"record" in section 149.011 of the Revised Code.	249
(12) "Designee" and "elected official" have the same meanings	250
as in section 109.43 of the Revised Code.	251
(B)(1) Upon request and subject to division (B)(8) of this	252
section, all public records responsive to the request shall be	253
promptly prepared and made available for inspection to any person	254
at all reasonable times during regular business hours. Subject to	255
division (B)(8) of this section, upon request, a public office or	256
person responsible for public records shall make copies of the	257

requested public record available at cost and within a reasonable 258
period of time. If a public record contains information that is 259
exempt from the duty to permit public inspection or to copy the 260
public record, the public office or the person responsible for the 261
public record shall make available all of the information within 262
the public record that is not exempt. When making that public 263
record available for public inspection or copying that public 264
record, the public office or the person responsible for the public 265
record shall notify the requester of any redaction or make the 266
redaction plainly visible. A redaction shall be deemed a denial of 267
a request to inspect or copy the redacted information, except if 268
federal or state law authorizes or requires a public office to 269
make the redaction. 270

(2) To facilitate broader access to public records, a public 271
office or the person responsible for public records shall organize 272
and maintain public records in a manner that they can be made 273
available for inspection or copying in accordance with division 274
(B) of this section. A public office also shall have available a 275
copy of its current records retention schedule at a location 276
readily available to the public. If a requester makes an ambiguous 277
or overly broad request or has difficulty in making a request for 278
copies or inspection of public records under this section such 279
that the public office or the person responsible for the requested 280
public record cannot reasonably identify what public records are 281
being requested, the public office or the person responsible for 282
the requested public record may deny the request but shall provide 283
the requester with an opportunity to revise the request by 284
informing the requester of the manner in which records are 285
maintained by the public office and accessed in the ordinary 286
course of the public office's or person's duties. 287

(3) If a request is ultimately denied, in part or in whole, 288
the public office or the person responsible for the requested 289

public record shall provide the requester with an explanation, 290
including legal authority, setting forth why the request was 291
denied. If the initial request was provided in writing, the 292
explanation also shall be provided to the requester in writing. 293
The explanation shall not preclude the public office or the person 294
responsible for the requested public record from relying upon 295
additional reasons or legal authority in defending an action 296
commenced under division (C) of this section. 297

(4) Unless specifically required or authorized by state or 298
federal law or in accordance with division (B) of this section, no 299
public office or person responsible for public records may limit 300
or condition the availability of public records by requiring 301
disclosure of the requester's identity or the intended use of the 302
requested public record. Any requirement that the requester 303
disclose the requestor's identity or the intended use of the 304
requested public record constitutes a denial of the request. 305

(5) A public office or person responsible for public records 306
may ask a requester to make the request in writing, may ask for 307
the requester's identity, and may inquire about the intended use 308
of the information requested, but may do so only after disclosing 309
to the requester that a written request is not mandatory and that 310
the requester may decline to reveal the requester's identity or 311
the intended use and when a written request or disclosure of the 312
identity or intended use would benefit the requester by enhancing 313
the ability of the public office or person responsible for public 314
records to identify, locate, or deliver the public records sought 315
by the requester. 316

(6) If any person chooses to obtain a copy of a public record 317
in accordance with division (B) of this section, the public office 318
or person responsible for the public record may require that 319
person to pay in advance the cost involved in providing the copy 320
of the public record in accordance with the choice made by the 321

person seeking the copy under this division. The public office or 322
the person responsible for the public record shall permit that 323
person to choose to have the public record duplicated upon paper, 324
upon the same medium upon which the public office or person 325
responsible for the public record keeps it, or upon any other 326
medium upon which the public office or person responsible for the 327
public record determines that it reasonably can be duplicated as 328
an integral part of the normal operations of the public office or 329
person responsible for the public record. When the person seeking 330
the copy makes a choice under this division, the public office or 331
person responsible for the public record shall provide a copy of 332
it in accordance with the choice made by the person seeking the 333
copy. Nothing in this section requires a public office or person 334
responsible for the public record to allow the person seeking a 335
copy of the public record to make the copies of the public record. 336

(7) Upon a request made in accordance with division (B) of 337
this section and subject to division (B)(6) of this section, a 338
public office or person responsible for public records shall 339
transmit a copy of a public record to any person by United States 340
mail or by any other means of delivery or transmission within a 341
reasonable period of time after receiving the request for the 342
copy. The public office or person responsible for the public 343
record may require the person making the request to pay in advance 344
the cost of postage if the copy is transmitted by United States 345
mail or the cost of delivery if the copy is transmitted other than 346
by United States mail, and to pay in advance the costs incurred 347
for other supplies used in the mailing, delivery, or transmission. 348

Any public office may adopt a policy and procedures that it 349
will follow in transmitting, within a reasonable period of time 350
after receiving a request, copies of public records by United 351
States mail or by any other means of delivery or transmission 352
pursuant to this division. A public office that adopts a policy 353

and procedures under this division shall comply with them in 354
performing its duties under this division. 355

In any policy and procedures adopted under this division, a 356
public office may limit the number of records requested by a 357
person that the office will transmit by United States mail to ten 358
per month, unless the person certifies to the office in writing 359
that the person does not intend to use or forward the requested 360
records, or the information contained in them, for commercial 361
purposes. For purposes of this division, "commercial" shall be 362
narrowly construed and does not include reporting or gathering 363
news, reporting or gathering information to assist citizen 364
oversight or understanding of the operation or activities of 365
government, or nonprofit educational research. 366

(8) A public office or person responsible for public records 367
is not required to permit a person who is incarcerated pursuant to 368
a criminal conviction or a juvenile adjudication to inspect or to 369
obtain a copy of any public record concerning a criminal 370
investigation or prosecution or concerning what would be a 371
criminal investigation or prosecution if the subject of the 372
investigation or prosecution were an adult, unless the request to 373
inspect or to obtain a copy of the record is for the purpose of 374
acquiring information that is subject to release as a public 375
record under this section and the judge who imposed the sentence 376
or made the adjudication with respect to the person, or the 377
judge's successor in office, finds that the information sought in 378
the public record is necessary to support what appears to be a 379
justiciable claim of the person. 380

(9) Upon written request made and signed by a journalist on 381
or after December 16, 1999, a public office, or person responsible 382
for public records, having custody of the records of the agency 383
employing a specified peace officer, parole officer, prosecuting 384
attorney, assistant prosecuting attorney, correctional employee, 385

youth services employee, firefighter, or EMT shall disclose to the 386
journalist the address of the actual personal residence of the 387
peace officer, parole officer, prosecuting attorney, assistant 388
prosecuting attorney, correctional employee, youth services 389
employee, firefighter, or EMT and, if the peace officer's, parole 390
officer's, prosecuting attorney's, assistant prosecuting 391
attorney's, correctional employee's, youth services employee's, 392
firefighter's, or EMT's spouse, former spouse, or child is 393
employed by a public office, the name and address of the employer 394
of the peace officer's, parole officer's, prosecuting attorney's, 395
assistant prosecuting attorney's, correctional employee's, youth 396
services employee's, firefighter's, or EMT's spouse, former 397
spouse, or child. The request shall include the journalist's name 398
and title and the name and address of the journalist's employer 399
and shall state that disclosure of the information sought would be 400
in the public interest. 401

As used in this division, "journalist" means a person engaged 402
in, connected with, or employed by any news medium, including a 403
newspaper, magazine, press association, news agency, or wire 404
service, a radio or television station, or a similar medium, for 405
the purpose of gathering, processing, transmitting, compiling, 406
editing, or disseminating information for the general public. 407

(C)(1) If a person allegedly is aggrieved by the failure of a 408
public office or the person responsible for public records to 409
promptly prepare a public record and to make it available to the 410
person for inspection in accordance with division (B) of this 411
section or by any other failure of a public office or the person 412
responsible for public records to comply with an obligation in 413
accordance with division (B) of this section, the person allegedly 414
aggrieved may commence a mandamus action to obtain a judgment that 415
orders the public office or the person responsible for the public 416
record to comply with division (B) of this section, that awards 417

court costs and reasonable attorney's fees to the person that 418
instituted the mandamus action, and, if applicable, that includes 419
an order fixing statutory damages under division (C)(1) of this 420
section. The mandamus action may be commenced in the court of 421
common pleas of the county in which division (B) of this section 422
allegedly was not complied with, in the supreme court pursuant to 423
its original jurisdiction under Section 2 of Article IV, Ohio 424
Constitution, or in the court of appeals for the appellate 425
district in which division (B) of this section allegedly was not 426
complied with pursuant to its original jurisdiction under Section 427
3 of Article IV, Ohio Constitution. 428

If a requestor transmits a written request by hand delivery 429
or certified mail to inspect or receive copies of any public 430
record in a manner that fairly describes the public record or 431
class of public records to the public office or person responsible 432
for the requested public records, except as otherwise provided in 433
this section, the requestor shall be entitled to recover the 434
amount of statutory damages set forth in this division if a court 435
determines that the public office or the person responsible for 436
public records failed to comply with an obligation in accordance 437
with division (B) of this section. 438

The amount of statutory damages shall be fixed at one hundred 439
dollars for each business day during which the public office or 440
person responsible for the requested public records failed to 441
comply with an obligation in accordance with division (B) of this 442
section, beginning with the day on which the requester files a 443
mandamus action to recover statutory damages, up to a maximum of 444
one thousand dollars. The award of statutory damages shall not be 445
construed as a penalty, but as compensation for injury arising 446
from lost use of the requested information. The existence of this 447
injury shall be conclusively presumed. The award of statutory 448
damages shall be in addition to all other remedies authorized by 449

this section. 450

The court may reduce an award of statutory damages or not 451
award statutory damages if the court determines both of the 452
following: 453

(a) That, based on the ordinary application of statutory law 454
and case law as it existed at the time of the conduct or 455
threatened conduct of the public office or person responsible for 456
the requested public records that allegedly constitutes a failure 457
to comply with an obligation in accordance with division (B) of 458
this section and that was the basis of the mandamus action, a 459
well-informed public office or person responsible for the 460
requested public records reasonably would believe that the conduct 461
or threatened conduct of the public office or person responsible 462
for the requested public records did not constitute a failure to 463
comply with an obligation in accordance with division (B) of this 464
section; 465

(b) That a well-informed public office or person responsible 466
for the requested public records reasonably would believe that the 467
conduct or threatened conduct of the public office or person 468
responsible for the requested public records would serve the 469
public policy that underlies the authority that is asserted as 470
permitting that conduct or threatened conduct. 471

(2)(a) If the court issues a writ of mandamus that orders the 472
public office or the person responsible for the public record to 473
comply with division (B) of this section and determines that the 474
circumstances described in division (C)(1) of this section exist, 475
the court shall determine and award to the relator all court 476
costs. 477

(b) If the court renders a judgment that orders the public 478
office or the person responsible for the public record to comply 479
with division (B) of this section, the court may award reasonable 480

attorney's fees subject to reduction as described in division 481
(C)(2)(c) of this section. The court shall award reasonable 482
attorney's fees, subject to reduction as described in division 483
(C)(2)(c) of this section when either of the following applies: 484

(i) The public office or the person responsible for the 485
public records failed to respond affirmatively or negatively to 486
the public records request in accordance with the time allowed 487
under division (B) of this section. 488

(ii) The public office or the person responsible for the 489
public records promised to permit the relator to inspect or 490
receive copies of the public records requested within a specified 491
period of time but failed to fulfill that promise within that 492
specified period of time. 493

(c) Court costs and reasonable attorney's fees awarded under 494
this section shall be construed as remedial and not punitive. 495
Reasonable attorney's fees shall include reasonable fees incurred 496
to produce proof of the reasonableness and amount of the fees and 497
to otherwise litigate entitlement to the fees. The court may 498
reduce an award of attorney's fees to the relator or not award 499
attorney's fees to the relator if the court determines both of the 500
following: 501

(i) That, based on the ordinary application of statutory law 502
and case law as it existed at the time of the conduct or 503
threatened conduct of the public office or person responsible for 504
the requested public records that allegedly constitutes a failure 505
to comply with an obligation in accordance with division (B) of 506
this section and that was the basis of the mandamus action, a 507
well-informed public office or person responsible for the 508
requested public records reasonably would believe that the conduct 509
or threatened conduct of the public office or person responsible 510
for the requested public records did not constitute a failure to 511
comply with an obligation in accordance with division (B) of this 512

section; 513

(ii) That a well-informed public office or person responsible 514
for the requested public records reasonably would believe that the 515
conduct or threatened conduct of the public office or person 516
responsible for the requested public records as described in 517
division (C)(2)(c)(i) of this section would serve the public 518
policy that underlies the authority that is asserted as permitting 519
that conduct or threatened conduct. 520

(D) Chapter 1347. of the Revised Code does not limit the 521
provisions of this section. 522

(E)(1) To ensure that all employees of public offices are 523
appropriately educated about a public office's obligations under 524
division (B) of this section, all elected officials or their 525
appropriate designees shall attend training approved by the 526
attorney general as provided in section 109.43 of the Revised 527
Code. In addition, all public offices shall adopt a public records 528
policy in compliance with this section for responding to public 529
records requests. In adopting a public records policy under this 530
division, a public office may obtain guidance from the model 531
public records policy developed and provided to the public office 532
by the attorney general under section 109.43 of the Revised Code. 533
Except as otherwise provided in this section, the policy may not 534
limit the number of public records that the public office will 535
make available to a single person, may not limit the number of 536
public records that it will make available during a fixed period 537
of time, and may not establish a fixed period of time before it 538
will respond to a request for inspection or copying of public 539
records, unless that period is less than eight hours. 540

(2) The public office shall distribute the public records 541
policy adopted by the public office under division (E)(1) of this 542
section to the employee of the public office who is the records 543
custodian or records manager or otherwise has custody of the 544

records of that office. The public office shall require that 545
employee to acknowledge receipt of the copy of the public records 546
policy. The public office shall create a poster that describes its 547
public records policy and shall post the poster in a conspicuous 548
place in the public office and in all locations where the public 549
office has branch offices. The public office may post its public 550
records policy on the internet web site of the public office if 551
the public office maintains an internet web site. A public office 552
that has established a manual or handbook of its general policies 553
and procedures for all employees of the public office shall 554
include the public records policy of the public office in the 555
manual or handbook. 556

(F)(1) The bureau of motor vehicles may adopt rules pursuant 557
to Chapter 119. of the Revised Code to reasonably limit the number 558
of bulk commercial special extraction requests made by a person 559
for the same records or for updated records during a calendar 560
year. The rules may include provisions for charges to be made for 561
bulk commercial special extraction requests for the actual cost of 562
the bureau, plus special extraction costs, plus ten per cent. The 563
bureau may charge for expenses for redacting information, the 564
release of which is prohibited by law. 565

(2) As used in division (F)(1) of this section: 566

(a) "Actual cost" means the cost of depleted supplies, 567
records storage media costs, actual mailing and alternative 568
delivery costs, or other transmitting costs, and any direct 569
equipment operating and maintenance costs, including actual costs 570
paid to private contractors for copying services. 571

(b) "Bulk commercial special extraction request" means a 572
request for copies of a record for information in a format other 573
than the format already available, or information that cannot be 574
extracted without examination of all items in a records series, 575
class of records, or data base by a person who intends to use or 576

forward the copies for surveys, marketing, solicitation, or resale 577
for commercial purposes. "Bulk commercial special extraction 578
request" does not include a request by a person who gives 579
assurance to the bureau that the person making the request does 580
not intend to use or forward the requested copies for surveys, 581
marketing, solicitation, or resale for commercial purposes. 582

(c) "Commercial" means profit-seeking production, buying, or 583
selling of any good, service, or other product. 584

(d) "Special extraction costs" means the cost of the time 585
spent by the lowest paid employee competent to perform the task, 586
the actual amount paid to outside private contractors employed by 587
the bureau, or the actual cost incurred to create computer 588
programs to make the special extraction. "Special extraction 589
costs" include any charges paid to a public agency for computer or 590
records services. 591

(3) For purposes of divisions (F)(1) and (2) of this section, 592
"surveys, marketing, solicitation, or resale for commercial 593
purposes" shall be narrowly construed and does not include 594
reporting or gathering news, reporting or gathering information to 595
assist citizen oversight or understanding of the operation or 596
activities of government, or nonprofit educational research. 597

Sec. 2903.01. (A) No person shall purposely, and with prior 598
calculation and design, cause the death of another or the unlawful 599
termination of another's pregnancy. 600

(B) No person shall purposely cause the death of another or 601
the unlawful termination of another's pregnancy while committing 602
or attempting to commit, or while fleeing immediately after 603
committing or attempting to commit, kidnapping, rape, aggravated 604
arson, arson, aggravated robbery, robbery, aggravated burglary, 605
burglary, terrorism, or escape. 606

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

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

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

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

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

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

(G) As used in this section:

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

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

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

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

Sec. 2903.11. (A) No person shall knowingly do either of the

following: 636

(1) Cause serious physical harm to another or to another's 637
unborn; 638

(2) Cause or attempt to cause physical harm to another or to 639
another's unborn by means of a deadly weapon or dangerous 640
ordnance. 641

(B) No person, with knowledge that the person has tested 642
positive as a carrier of a virus that causes acquired 643
immunodeficiency syndrome, shall knowingly do any of the 644
following: 645

(1) Engage in sexual conduct with another person without 646
disclosing that knowledge to the other person prior to engaging in 647
the sexual conduct; 648

(2) Engage in sexual conduct with a person whom the offender 649
knows or has reasonable cause to believe lacks the mental capacity 650
to appreciate the significance of the knowledge that the offender 651
has tested positive as a carrier of a virus that causes acquired 652
immunodeficiency syndrome; 653

(3) Engage in sexual conduct with a person under eighteen 654
years of age who is not the spouse of the offender. 655

(C) The prosecution of a person under this section does not 656
preclude prosecution of that person under section 2907.02 of the 657
Revised Code. 658

(D)(1)(a) Whoever violates this section is guilty of 659
felonious assault. Except as otherwise provided in this division 660
or division (D)(1)(b) of this section, felonious assault is a 661
felony of the second degree. If the victim of a violation of 662
division (A) of this section is a judge, magistrate, peace 663
officer, or ~~an~~ investigator of the bureau of criminal 664
identification and investigation, felonious assault is a felony of 665

the first degree. 666

(b) Regardless of whether the felonious assault is a felony 667
of the first or second degree under division (D)(1)(a) of this 668
section, if the offender also is convicted of or pleads guilty to 669
a specification as described in section 2941.1423 of the Revised 670
Code that was included in the indictment, count in the indictment, 671
or information charging the offense, except as otherwise provided 672
in this division or unless a longer prison term is required under 673
any other provision of law, the court shall sentence the offender 674
to a mandatory prison term as provided in division (D)(8) of 675
section 2929.14 of the Revised Code. If the victim of the offense 676
is a judge, magistrate, peace officer, or ~~an~~ investigator of the 677
bureau of criminal identification and investigation, and if the 678
victim suffered serious physical harm as a result of the 679
commission of the offense, felonious assault is a felony of the 680
first degree, and the court, pursuant to division (F) of section 681
2929.13 of the Revised Code, shall impose as a mandatory prison 682
term one of the prison terms prescribed for a felony of the first 683
degree. 684

(2) In addition to any other sanctions imposed pursuant to 685
division (D)(1) of this section for felonious assault committed in 686
violation of division (A)(2) of this section, if the deadly weapon 687
used in the commission of the violation is a motor vehicle, the 688
court shall impose upon the offender a class two suspension of the 689
offender's driver's license, commercial driver's license, 690
temporary instruction permit, probationary license, or nonresident 691
operating privilege as specified in division (A)(2) of section 692
4510.02 of the Revised Code. 693

(E) As used in this section: 694

(1) "Deadly weapon" and "dangerous ordnance" have the same 695
meanings as in section 2923.11 of the Revised Code. 696

(2) "Motor vehicle" has the same meaning as in section 697
4501.01 of the Revised Code. 698

(3) "Peace officer" has the same meaning as in section 699
2935.01 of the Revised Code. 700

(4) "Sexual conduct" has the same meaning as in section 701
2907.01 of the Revised Code, except that, as used in this section, 702
it does not include the insertion of an instrument, apparatus, or 703
other object that is not a part of the body into the vaginal or 704
anal opening of another, unless the offender knew at the time of 705
the insertion that the instrument, apparatus, or other object 706
carried the offender's bodily fluid. 707

(5) "Investigator of the bureau of criminal identification 708
and investigation" means an investigator of the bureau of criminal 709
identification and investigation who is commissioned by the 710
superintendent of the bureau as a special agent for the purpose of 711
assisting law enforcement officers or providing emergency 712
assistance to peace officers pursuant to authority granted under 713
section 109.541 of the Revised Code. 714

(6) "Investigator" has the same meaning as in section 109.541 715
of the Revised Code. 716

(7) "Judge" and "magistrate" have the same meanings as in 717
section 2903.01 of the Revised Code. 718

Sec. 2903.12. (A) No person, while under the influence of 719
sudden passion or in a sudden fit of rage, either of which is 720
brought on by serious provocation occasioned by the victim that is 721
reasonably sufficient to incite the person into using deadly 722
force, shall knowingly: 723

(1) Cause serious physical harm to another or to another's 724
unborn; 725

(2) Cause or attempt to cause physical harm to another or to 726

another's unborn by means of a deadly weapon or dangerous 727
ordnance, as defined in section 2923.11 of the Revised Code. 728

(B) Whoever violates this section is guilty of aggravated 729
assault. Except as otherwise provided in this division, aggravated 730
assault is a felony of the fourth degree. If the victim of the 731
offense is a judge, magistrate, peace officer, or ~~an~~ investigator 732
of the bureau of criminal identification and investigation, 733
aggravated assault is a felony of the third degree. Regardless of 734
whether the offense is a felony of the third or fourth degree 735
under this division, if the offender also is convicted of or 736
pleads guilty to a specification as described in section 2941.1423 737
of the Revised Code that was included in the indictment, count in 738
the indictment, or information charging the offense, except as 739
otherwise provided in this division, the court shall sentence the 740
offender to a mandatory prison term as provided in division (D)(8) 741
of section 2929.14 of the Revised Code. If the victim of the 742
offense is a judge, magistrate, peace officer, or ~~an~~ investigator 743
of the bureau of criminal identification and investigation, and if 744
the victim suffered serious physical harm as a result of the 745
commission of the offense, aggravated assault is a felony of the 746
third degree, and the court, pursuant to division (F) of section 747
2929.13 of the Revised Code, shall impose as a mandatory prison 748
term one of the prison terms prescribed for a felony of the third 749
degree. 750

(C) As used in this section: 751

(1) "Investigator of the bureau of criminal identification 752
and investigation" has the same meaning as in section 2903.11 of 753
the Revised Code. 754

(2) "Peace officer" has the same meaning as in section 755
2935.01 of the Revised Code. 756

(3) "Judge" and "magistrate" have the same meanings as in 757

section 2903.01 of the Revised Code. 758

Sec. 2903.13. (A) No person shall knowingly cause or attempt 759
to cause physical harm to another or to another's unborn. 760

(B) No person shall recklessly cause serious physical harm to 761
another or to another's unborn. 762

(C) Whoever violates this section is guilty of assault, and 763
the court shall sentence the offender as provided in this division 764
and divisions (C)(1), (2), (3), (4), (5), and (6) of this section. 765
Except as otherwise provided in division (C)(1), (2), (3), (4), or 766
(5) of this section, assault is a misdemeanor of the first degree. 767

(1) Except as otherwise provided in this division, if the 768
offense is committed by a caretaker against a functionally 769
impaired person under the caretaker's care, assault is a felony of 770
the fourth degree. If the offense is committed by a caretaker 771
against a functionally impaired person under the caretaker's care, 772
if the offender previously has been convicted of or pleaded guilty 773
to a violation of this section or section 2903.11 or 2903.16 of 774
the Revised Code, and if in relation to the previous conviction 775
the offender was a caretaker and the victim was a functionally 776
impaired person under the offender's care, assault is a felony of 777
the third degree. 778

(2) If the offense is committed in any of the following 779
circumstances, assault is a felony of the fifth degree: 780

(a) The offense occurs in or on the grounds of a state 781
correctional institution or an institution of the department of 782
youth services, the victim of the offense is an employee of the 783
department of rehabilitation and correction, the department of 784
youth services, or a probation department or is on the premises of 785
the particular institution for business purposes or as a visitor, 786
and the offense is committed by a person incarcerated in the state 787

correctional institution, by a person institutionalized in the 788
department of youth services institution pursuant to a commitment 789
to the department of youth services, by a parolee, by an offender 790
under transitional control, under a community control sanction, or 791
on an escorted visit, by a person under post-release control, or 792
by an offender under any other type of supervision by a government 793
agency. 794

(b) The offense occurs in or on the grounds of a local 795
correctional facility, the victim of the offense is an employee of 796
the local correctional facility or a probation department or is on 797
the premises of the facility for business purposes or as a 798
visitor, and the offense is committed by a person who is under 799
custody in the facility subsequent to the person's arrest for any 800
crime or delinquent act, subsequent to the person's being charged 801
with or convicted of any crime, or subsequent to the person's 802
being alleged to be or adjudicated a delinquent child. 803

(c) The offense occurs off the grounds of a state 804
correctional institution and off the grounds of an institution of 805
the department of youth services, the victim of the offense is an 806
employee of the department of rehabilitation and correction, the 807
department of youth services, or a probation department, the 808
offense occurs during the employee's official work hours and while 809
the employee is engaged in official work responsibilities, and the 810
offense is committed by a person incarcerated in a state 811
correctional institution or institutionalized in the department of 812
youth services who temporarily is outside of the institution for 813
any purpose, by a parolee, by an offender under transitional 814
control, under a community control sanction, or on an escorted 815
visit, by a person under post-release control, or by an offender 816
under any other type of supervision by a government agency. 817

(d) The offense occurs off the grounds of a local 818
correctional facility, the victim of the offense is an employee of 819

the local correctional facility or a probation department, the 820
offense occurs during the employee's official work hours and while 821
the employee is engaged in official work responsibilities, and the 822
offense is committed by a person who is under custody in the 823
facility subsequent to the person's arrest for any crime or 824
delinquent act, subsequent to the person being charged with or 825
convicted of any crime, or subsequent to the person being alleged 826
to be or adjudicated a delinquent child and who temporarily is 827
outside of the facility for any purpose or by a parolee, by an 828
offender under transitional control, under a community control 829
sanction, or on an escorted visit, by a person under post-release 830
control, or by an offender under any other type of supervision by 831
a government agency. 832

(e) The victim of the offense is a school teacher or 833
administrator or a school bus operator, and the offense occurs in 834
a school, on school premises, in a school building, on a school 835
bus, or while the victim is outside of school premises or a school 836
bus and is engaged in duties or official responsibilities 837
associated with the victim's employment or position as a school 838
teacher or administrator or a school bus operator, including, but 839
not limited to, driving, accompanying, or chaperoning students at 840
or on class or field trips, athletic events, or other school 841
extracurricular activities or functions outside of school 842
premises. 843

(3) If the victim of the offense is a judge, magistrate, 844
peace officer, or an investigator of the bureau of criminal 845
identification and investigation, a firefighter, or a person 846
performing emergency medical service, while in the performance of 847
their official duties, assault is a felony of the fourth degree. 848

(4) If the victim of the offense is a judge, magistrate, 849
peace officer, or an investigator of the bureau of criminal 850
identification and investigation and if the victim suffered 851

serious physical harm as a result of the commission of the 852
offense, assault is a felony of the fourth degree, and the court, 853
pursuant to division (F) of section 2929.13 of the Revised Code, 854
shall impose as a mandatory prison term one of the prison terms 855
prescribed for a felony of the fourth degree that is at least 856
twelve months in duration. 857

(5) If the victim of the offense is an officer or employee of 858
a public children services agency or a private child placing 859
agency and the offense relates to the officer's or employee's 860
performance or anticipated performance of official 861
responsibilities or duties, assault is either a felony of the 862
fifth degree or, if the offender previously has been convicted of 863
or pleaded guilty to an offense of violence, the victim of that 864
prior offense was an officer or employee of a public children 865
services agency or private child placing agency, and that prior 866
offense related to the officer's or employee's performance or 867
anticipated performance of official responsibilities or duties, a 868
felony of the fourth degree. 869

(6) If an offender who is convicted of or pleads guilty to 870
assault when it is a misdemeanor also is convicted of or pleads 871
guilty to a specification as described in section 2941.1423 of the 872
Revised Code that was included in the indictment, count in the 873
indictment, or information charging the offense, the court shall 874
sentence the offender to a mandatory jail term as provided in 875
division (G) of section 2929.24 of the Revised Code. 876

If an offender who is convicted of or pleads guilty to 877
assault when it is a felony also is convicted of or pleads guilty 878
to a specification as described in section 2941.1423 of the 879
Revised Code that was included in the indictment, count in the 880
indictment, or information charging the offense, except as 881
otherwise provided in division (C)(4) of this section, the court 882
shall sentence the offender to a mandatory prison term as provided 883

in division (D)(8) of section 2929.14 of the Revised Code. 884
885

(D) As used in this section: 886

(1) "Peace officer" has the same meaning as in section 887
2935.01 of the Revised Code. 888

(2) "Firefighter" has the same meaning as in section 3937.41 889
of the Revised Code. 890

(3) "Emergency medical service" has the same meaning as in 891
section 4765.01 of the Revised Code. 892

(4) "Local correctional facility" means a county, 893
multicounty, municipal, municipal-county, or multicounty-municipal 894
jail or workhouse, a minimum security jail established under 895
section 341.23 or 753.21 of the Revised Code, or another county, 896
multicounty, municipal, municipal-county, or multicounty-municipal 897
facility used for the custody of persons arrested for any crime or 898
delinquent act, persons charged with or convicted of any crime, or 899
persons alleged to be or adjudicated a delinquent child. 900

(5) "Employee of a local correctional facility" means a 901
person who is an employee of the political subdivision or of one 902
or more of the affiliated political subdivisions that operates the 903
local correctional facility and who operates or assists in the 904
operation of the facility. 905

(6) "School teacher or administrator" means either of the 906
following: 907

(a) A person who is employed in the public schools of the 908
state under a contract described in section 3319.08 of the Revised 909
Code in a position in which the person is required to have a 910
certificate issued pursuant to sections 3319.22 to 3319.311 of the 911
Revised Code. 912

(b) A person who is employed by a nonpublic school for which 913

the state board of education prescribes minimum standards under 914
section 3301.07 of the Revised Code and who is certificated in 915
accordance with section 3301.071 of the Revised Code. 916

(7) "Community control sanction" has the same meaning as in 917
section 2929.01 of the Revised Code. 918

(8) "Escorted visit" means an escorted visit granted under 919
section 2967.27 of the Revised Code. 920

(9) "Post-release control" and "transitional control" have 921
the same meanings as in section 2967.01 of the Revised Code. 922

(10) "Investigator of the bureau of criminal identification 923
and investigation" has the same meaning as in section 2903.11 of 924
the Revised Code. 925

(11) "Judge" and "magistrate" have the same meanings as in 926
section 2903.01 of the Revised Code. 927

Sec. 2903.21. (A) No person shall knowingly cause another to 928
believe that the offender will cause serious physical harm to the 929
person or property of the other person, the other person's unborn, 930
or a member of the other person's immediate family. 931

(B) Whoever violates this section is guilty of aggravated 932
menacing. Except as otherwise provided in this division, 933
aggravated menacing is a misdemeanor of the first degree. If the 934
victim of the offense is a judge or magistrate or an officer or 935
employee of a public children services agency or a private child 936
placing agency and the offense relates to the judge's, 937
magistrate's, officer's, or employee's performance or anticipated 938
performance of official responsibilities or duties, aggravated 939
menacing is a felony of the fifth degree or, if the offender 940
previously has been convicted of or pleaded guilty to an offense 941
of violence, the victim of that prior offense was a judge or 942
magistrate or an officer or employee of a public children services 943

agency or private child placing agency, and that prior offense 944
related to the judge's, magistrate's, officer's, or employee's 945
performance or anticipated performance of official 946
responsibilities or duties, a felony of the fourth degree. 947

(C) As used in this section, "judge" and "magistrate" have 948
the same meanings as in section 2903.01 of the Revised Code. 949

Sec. 2903.23. (A) As used in this section: 950

(1) "Immediate family" includes a person's spouse, brothers 951
and sisters of the whole or half blood, children, including 952
adopted children and stepchildren, parents, and grandparents. 953

(2) "Judge" and "magistrate" have the same meanings as in 954
section 2903.01 of the Revised Code. 955

(B) No person, with intent to influence or interfere with a 956
judge or magistrate in the performance of the judge's or 957
magistrate's official duties or to retaliate against a judge or 958
magistrate for any decision made or action taken in the 959
performance of the judge's or magistrate's official duties, shall 960
knowingly threaten a judge or magistrate with physical harm to the 961
person or property of the judge or magistrate, the judge's or 962
magistrate's unborn, or a member of the judge's or magistrate's 963
immediate family. 964

(C) Whoever violates division (B) of this section is guilty 965
of threatening a judge or magistrate, a felony of the fifth 966
degree. 967

Sec. 2929.04. (A) Imposition of the death penalty for 968
aggravated murder is precluded unless one or more of the following 969
is specified in the indictment or count in the indictment pursuant 970
to section 2941.14 of the Revised Code and proved beyond a 971
reasonable doubt: 972

(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 has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

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

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

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

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

(5) Prior to the offense at bar, the offender was convicted

of an offense an essential element of which was the purposeful 1004
killing of or attempt to kill another, or the offense at bar was 1005
part of a course of conduct involving the purposeful killing of or 1006
attempt to kill two or more persons by the offender. 1007

(6) The victim of the offense was a law enforcement officer, 1008
as defined in section 2911.01 of the Revised Code, or a judge or 1009
magistrate, as defined in section 2903.01 of the Revised Code, 1010
whom the offender had reasonable cause to know or knew to be a law 1011
enforcement officer or a judge or magistrate as so defined, and 1012
either the victim, at the time of the commission of the offense, 1013
was engaged in the victim's duties, or it was the offender's 1014
specific purpose to kill a law enforcement officer or a judge or 1015
magistrate as so defined. 1016

(7) The offense was committed while the offender was 1017
committing, attempting to commit, or fleeing immediately after 1018
committing or attempting to commit kidnapping, rape, aggravated 1019
arson, aggravated robbery, or aggravated burglary, and either the 1020
offender was the principal offender in the commission of the 1021
aggravated murder or, if not the principal offender, committed the 1022
aggravated murder with prior calculation and design. 1023

(8) The victim of the aggravated murder was a witness to an 1024
offense who was purposely killed to prevent the victim's testimony 1025
in any criminal proceeding and the aggravated murder was not 1026
committed during the commission, attempted commission, or flight 1027
immediately after the commission or attempted commission of the 1028
offense to which the victim was a witness, or the victim of the 1029
aggravated murder was a witness to an offense and was purposely 1030
killed in retaliation for the victim's testimony in any criminal 1031
proceeding. 1032

(9) The offender, in the commission of the offense, 1033
purposefully caused the death of another who was under thirteen 1034
years of age at the time of the commission of the offense, and 1035

either the offender was the principal offender in the commission 1036
of the offense or, if not the principal offender, committed the 1037
offense with prior calculation and design. 1038

(10) The offense was committed while the offender was 1039
committing, attempting to commit, or fleeing immediately after 1040
committing or attempting to commit terrorism. 1041

(B) If one or more of the aggravating circumstances listed in 1042
division (A) of this section is specified in the indictment or 1043
count in the indictment and proved beyond a reasonable doubt, and 1044
if the offender did not raise the matter of age pursuant to 1045
section 2929.023 of the Revised Code or if the offender, after 1046
raising the matter of age, was found at trial to have been 1047
eighteen years of age or older at the time of the commission of 1048
the offense, the court, trial jury, or panel of three judges shall 1049
consider, and weigh against the aggravating circumstances proved 1050
beyond a reasonable doubt, the nature and circumstances of the 1051
offense, the history, character, and background of the offender, 1052
and all of the following factors: 1053

(1) Whether the victim of the offense induced or facilitated 1054
it; 1055

(2) Whether it is unlikely that the offense would have been 1056
committed, but for the fact that the offender was under duress, 1057
coercion, or strong provocation; 1058

(3) Whether, at the time of committing the offense, the 1059
offender, because of a mental disease or defect, lacked 1060
substantial capacity to appreciate the criminality of the 1061
offender's conduct or to conform the offender's conduct to the 1062
requirements of the law; 1063

(4) The youth of the offender; 1064

(5) The offender's lack of a significant history of prior 1065
criminal convictions and delinquency adjudications; 1066

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

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

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

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

Section 2. That existing sections 149.43, 2903.01, 2903.11, 2903.12, 2903.13, 2903.21, and 2929.04 of the Revised Code are hereby repealed.

Section 3. Section 149.43 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 9 and Sub. H.B. 141 of the 126th General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.