

**As Introduced**

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

**S. B. No. 202**

**Senator Turner**

—

**A BILL**

To amend sections 2903.01, 2903.11, 2903.12, 2903.13, 1  
and 2929.04 of the Revised Code to increase the 2  
penalties for certain offenses when a public 3  
utility worker is the victim and to make the 4  
killing of a public utility worker an aggravating 5  
circumstance for the imposition of the death 6  
penalty for aggravated murder. 7

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

**Section 1.** That sections 2903.01, 2903.11, 2903.12, 2903.13, 8  
and 2929.04 of the Revised Code be amended to read as follows: 9

**Sec. 2903.01.** (A) No person shall purposely, and with prior 10  
calculation and design, cause the death of another or the unlawful 11  
termination of another's pregnancy. 12

(B) No person shall purposely cause the death of another or 13  
the unlawful termination of another's pregnancy while committing 14  
or attempting to commit, or while fleeing immediately after 15  
committing or attempting to commit, kidnapping, rape, aggravated 16  
arson, arson, aggravated robbery, robbery, aggravated burglary, 17  
burglary, terrorism, or escape. 18

(C) No person shall purposely cause the death of another who 19  
is under thirteen years of age at the time of the commission of 20

the offense. 21

(D) No person who is under detention as a result of having 22  
been found guilty of or having pleaded guilty to a felony or who 23  
breaks that detention shall purposely cause the death of another. 24

(E) No person shall purposely cause the death of a law 25  
enforcement officer or public utility worker whom the offender 26  
knows or has reasonable cause to know is a law enforcement officer 27  
or public utility worker when either of the following applies: 28  
29

(1) The victim, at the time of the commission of the offense, 30  
is engaged in the victim's duties. 31

(2) It is the offender's specific purpose to kill a law 32  
enforcement officer or public utility worker. 33

(F) Whoever violates this section is guilty of aggravated 34  
murder, and shall be punished as provided in section 2929.02 of 35  
the Revised Code. 36

(G) As used in this section: 37

(1) "Detention" has the same meaning as in section 2921.01 of 38  
the Revised Code. 39

(2) "Law enforcement officer" has the same meaning as in 40  
section 2911.01 of the Revised Code. 41

(3) "Public utility" has the same meaning as in section 42  
3125.41 of the Revised Code and also includes the United States 43  
postal service. 44

(4) "Public utility worker" means an employee of a public 45  
utility who does not work primarily at one location and whose 46  
chief duties involve activities, such as the delivery of items to 47  
or the installation or repair of items or fixtures at homes or 48  
businesses, that occur at various customers' premises. 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)(a) Whoever violates this section is guilty of	74
felonious assault. Except as otherwise provided in this division	75
or division (D)(1)(b) of this section, felonious assault is a	76
felony of the second degree. If the victim of a violation of	77
division (A) of this section is a peace officer <del>or an</del>	78
investigator of the bureau of criminal identification and	79

investigation, or public utility worker, felonious assault is a 80  
felony of the first degree. 81

(b) Regardless of whether the felonious assault is a felony 82  
of the first or second degree under division (D)(1)(a) of this 83  
section, if the offender also is convicted of or pleads guilty to 84  
a specification as described in section 2941.1423 of the Revised 85  
Code that was included in the indictment, count in the indictment, 86  
or information charging the offense, except as otherwise provided 87  
in this division or unless a longer prison term is required under 88  
any other provision of law, the court shall sentence the offender 89  
to a mandatory prison term as provided in division (D)(8) of 90  
section 2929.14 of the Revised Code. If the victim of the offense 91  
is a peace officer ~~or an~~ investigator of the bureau of criminal 92  
identification and investigation, or public utility worker, and if 93  
the victim suffered serious physical harm as a result of the 94  
commission of the offense, felonious assault is a felony of the 95  
first degree, and the court, pursuant to division (F) of section 96  
2929.13 of the Revised Code, shall impose as a mandatory prison 97  
term one of the prison terms prescribed for a felony of the first 98  
degree. 99

(2) In addition to any other sanctions imposed pursuant to 100  
division (D)(1) of this section for felonious assault committed in 101  
violation of division (A)(2) of this section, if the deadly weapon 102  
used in the commission of the violation is a motor vehicle, the 103  
court shall impose upon the offender a class two suspension of the 104  
offender's driver's license, commercial driver's license, 105  
temporary instruction permit, probationary license, or nonresident 106  
operating privilege as specified in division (A)(2) of section 107  
4510.02 of the Revised Code. 108

(E) As used in this section: 109

(1) "Deadly weapon" and "dangerous ordnance" have the same 110  
meanings as in section 2923.11 of the Revised Code. 111

(2) "Motor vehicle" has the same meaning as in section 112  
4501.01 of the Revised Code. 113

(3) "Peace officer" has the same meaning as in section 114  
2935.01 of the Revised Code. 115

(4) "Sexual conduct" has the same meaning as in section 116  
2907.01 of the Revised Code, except that, as used in this section, 117  
it does not include the insertion of an instrument, apparatus, or 118  
other object that is not a part of the body into the vaginal or 119  
anal opening of another, unless the offender knew at the time of 120  
the insertion that the instrument, apparatus, or other object 121  
carried the offender's bodily fluid. 122

(5) "Investigator of the bureau of criminal identification 123  
and investigation" means an investigator of the bureau of criminal 124  
identification and investigation who is commissioned by the 125  
superintendent of the bureau as a special agent for the purpose of 126  
assisting law enforcement officers or providing emergency 127  
assistance to peace officers pursuant to authority granted under 128  
section 109.541 of the Revised Code. 129

(6) "Investigator" has the same meaning as in section 109.541 130  
of the Revised Code. 131

(7) "Public utility worker" has the same meaning as in 132  
section 2903.01 of the Revised Code. 133

**Sec. 2903.12.** (A) No person, while under the influence of 134  
sudden passion or in a sudden fit of rage, either of which is 135  
brought on by serious provocation occasioned by the victim that is 136  
reasonably sufficient to incite the person into using deadly 137  
force, shall knowingly: 138

(1) Cause serious physical harm to another or to another's 139  
unborn; 140

(2) Cause or attempt to cause physical harm to another or to 141

another's unborn by means of a deadly weapon or dangerous 142  
ordnance, as defined in section 2923.11 of the Revised Code. 143

(B) Whoever violates this section is guilty of aggravated 144  
assault. Except as otherwise provided in this division, aggravated 145  
assault is a felony of the fourth degree. If the victim of the 146  
offense is a peace officer ~~or an~~ investigator of the bureau of 147  
criminal identification and investigation, or public utility 148  
worker, aggravated assault is a felony of the third degree. 149  
Regardless of whether the offense is a felony of the third or 150  
fourth degree under this division, if the offender also is 151  
convicted of or pleads guilty to a specification as described in 152  
section 2941.1423 of the Revised Code that was included in the 153  
indictment, count in the indictment, or information charging the 154  
offense, except as otherwise provided in this division, the court 155  
shall sentence the offender to a mandatory prison term as provided 156  
in division (D)(8) of section 2929.14 of the Revised Code. If the 157  
victim of the offense is a peace officer ~~or an~~ investigator of 158  
the bureau of criminal identification and investigation, or public 159  
utility worker, and if the victim suffered serious physical harm 160  
as a result of the commission of the offense, aggravated assault 161  
is a felony of the third degree, and the court, pursuant to 162  
division (F) of section 2929.13 of the Revised Code, shall impose 163  
as a mandatory prison term one of the prison terms prescribed for 164  
a felony of the third degree. 165

(C) As used in this section: 166

(1) "Investigator of the bureau of criminal identification 167  
and investigation" has the same meaning as in section 2903.11 of 168  
the Revised Code. 169

(2) "Peace officer" has the same meaning as in section 170  
2935.01 of the Revised Code. 171

(3) "Public utility worker" has the same meaning as in 172

section 2903.01 of the Revised Code. 173

**Sec. 2903.13.** (A) No person shall knowingly cause or attempt 174  
to cause physical harm to another or to another's unborn. 175

(B) No person shall recklessly cause serious physical harm to 176  
another or to another's unborn. 177

(C) Whoever violates this section is guilty of assault, and 178  
the court shall sentence the offender as provided in this division 179  
and divisions (C)(1), (2), (3), (4), (5), and (6) of this section. 180  
Except as otherwise provided in division (C)(1), (2), (3), (4), or 181  
(5) of this section, assault is a misdemeanor of the first degree. 182

(1) Except as otherwise provided in this division, if the 183  
offense is committed by a caretaker against a functionally 184  
impaired person under the caretaker's care, assault is a felony of 185  
the fourth degree. If the offense is committed by a caretaker 186  
against a functionally impaired person under the caretaker's care, 187  
if the offender previously has been convicted of or pleaded guilty 188  
to a violation of this section or section 2903.11 or 2903.16 of 189  
the Revised Code, and if in relation to the previous conviction 190  
the offender was a caretaker and the victim was a functionally 191  
impaired person under the offender's care, assault is a felony of 192  
the third degree. 193

(2) If the offense is committed in any of the following 194  
circumstances, assault is a felony of the fifth degree: 195

(a) The offense occurs in or on the grounds of a state 196  
correctional institution or an institution of the department of 197  
youth services, the victim of the offense is an employee of the 198  
department of rehabilitation and correction, the department of 199  
youth services, or a probation department or is on the premises of 200  
the particular institution for business purposes or as a visitor, 201  
and the offense is committed by a person incarcerated in the state 202

correctional institution, by a person institutionalized in the 203  
department of youth services institution pursuant to a commitment 204  
to the department of youth services, by a parolee, by an offender 205  
under transitional control, under a community control sanction, or 206  
on an escorted visit, by a person under post-release control, or 207  
by an offender under any other type of supervision by a government 208  
agency. 209

(b) The offense occurs in or on the grounds of a local 210  
correctional facility, the victim of the offense is an employee of 211  
the local correctional facility or a probation department or is on 212  
the premises of the facility for business purposes or as a 213  
visitor, and the offense is committed by a person who is under 214  
custody in the facility subsequent to the person's arrest for any 215  
crime or delinquent act, subsequent to the person's being charged 216  
with or convicted of any crime, or subsequent to the person's 217  
being alleged to be or adjudicated a delinquent child. 218

(c) The offense occurs off the grounds of a state 219  
correctional institution and off the grounds of an institution of 220  
the department of youth services, the victim of the offense is an 221  
employee of the department of rehabilitation and correction, the 222  
department of youth services, or a probation department, the 223  
offense occurs during the employee's official work hours and while 224  
the employee is engaged in official work responsibilities, and the 225  
offense is committed by a person incarcerated in a state 226  
correctional institution or institutionalized in the department of 227  
youth services who temporarily is outside of the institution for 228  
any purpose, by a parolee, by an offender under transitional 229  
control, under a community control sanction, or on an escorted 230  
visit, by a person under post-release control, or by an offender 231  
under any other type of supervision by a government agency. 232

(d) The offense occurs off the grounds of a local 233  
correctional facility, the victim of the offense is an employee of 234



the local correctional facility or a probation department, the 235  
offense occurs during the employee's official work hours and while 236  
the employee is engaged in official work responsibilities, and the 237  
offense is committed by a person who is under custody in the 238  
facility subsequent to the person's arrest for any crime or 239  
delinquent act, subsequent to the person being charged with or 240  
convicted of any crime, or subsequent to the person being alleged 241  
to be or adjudicated a delinquent child and who temporarily is 242  
outside of the facility for any purpose or by a parolee, by an 243  
offender under transitional control, under a community control 244  
sanction, or on an escorted visit, by a person under post-release 245  
control, or by an offender under any other type of supervision by 246  
a government agency. 247

(e) The victim of the offense is a school teacher or 248  
administrator or a school bus operator, and the offense occurs in 249  
a school, on school premises, in a school building, on a school 250  
bus, or while the victim is outside of school premises or a school 251  
bus and is engaged in duties or official responsibilities 252  
associated with the victim's employment or position as a school 253  
teacher or administrator or a school bus operator, including, but 254  
not limited to, driving, accompanying, or chaperoning students at 255  
or on class or field trips, athletic events, or other school 256  
extracurricular activities or functions outside of school 257  
premises. 258

(3) If the victim of the offense is a peace officer ~~or an~~, 259  
investigator of the bureau of criminal identification and 260  
investigation, a firefighter, ~~or a~~ person performing emergency 261  
medical service, or public utility worker, while in the 262  
performance of ~~their~~ official duties or in the course of 263  
employment, assault is a felony of the fourth degree. 264

(4) If the victim of the offense is a peace officer ~~or an~~, 265  
investigator of the bureau of criminal identification and 266

investigation, or public utility worker and if the victim suffered 267  
serious physical harm as a result of the commission of the 268  
offense, assault is a felony of the fourth degree, and the court, 269  
pursuant to division (F) of section 2929.13 of the Revised Code, 270  
shall impose as a mandatory prison term one of the prison terms 271  
prescribed for a felony of the fourth degree that is at least 272  
twelve months in duration. 273

(5) If the victim of the offense is an officer or employee of 274  
a public children services agency or a private child placing 275  
agency and the offense relates to the officer's or employee's 276  
performance or anticipated performance of official 277  
responsibilities or duties, assault is either a felony of the 278  
fifth degree or, if the offender previously has been convicted of 279  
or pleaded guilty to an offense of violence, the victim of that 280  
prior offense was an officer or employee of a public children 281  
services agency or private child placing agency, and that prior 282  
offense related to the officer's or employee's performance or 283  
anticipated performance of official responsibilities or duties, a 284  
felony of the fourth degree. 285

(6) If an offender who is convicted of or pleads guilty to 286  
assault when it is a misdemeanor also is convicted of or pleads 287  
guilty to a specification as described in section 2941.1423 of the 288  
Revised Code that was included in the indictment, count in the 289  
indictment, or information charging the offense, the court shall 290  
sentence the offender to a mandatory jail term as provided in 291  
division (G) of section 2929.24 of the Revised Code. 292

If an offender who is convicted of or pleads guilty to 293  
assault when it is a felony also is convicted of or pleads guilty 294  
to a specification as described in section 2941.1423 of the 295  
Revised Code that was included in the indictment, count in the 296  
indictment, or information charging the offense, except as 297  
otherwise provided in division (C)(4) of this section, the court 298

shall sentence the offender to a mandatory prison term as provided 299  
in division (D)(8) of section 2929.14 of the Revised Code. 300  
301

(D) As used in this section: 302

(1) "Peace officer" has the same meaning as in section 303  
2935.01 of the Revised Code. 304

(2) "Firefighter" has the same meaning as in section 3937.41 305  
of the Revised Code. 306

(3) "Emergency medical service" has the same meaning as in 307  
section 4765.01 of the Revised Code. 308

(4) "Local correctional facility" means a county, 309  
multicounty, municipal, municipal-county, or multicounty-municipal 310  
jail or workhouse, a minimum security jail established under 311  
section 341.23 or 753.21 of the Revised Code, or another county, 312  
multicounty, municipal, municipal-county, or multicounty-municipal 313  
facility used for the custody of persons arrested for any crime or 314  
delinquent act, persons charged with or convicted of any crime, or 315  
persons alleged to be or adjudicated a delinquent child. 316

(5) "Employee of a local correctional facility" means a 317  
person who is an employee of the political subdivision or of one 318  
or more of the affiliated political subdivisions that operates the 319  
local correctional facility and who operates or assists in the 320  
operation of the facility. 321

(6) "School teacher or administrator" means either of the 322  
following: 323

(a) A person who is employed in the public schools of the 324  
state under a contract described in section 3319.08 of the Revised 325  
Code in a position in which the person is required to have a 326  
certificate issued pursuant to sections 3319.22 to 3319.311 of the 327  
Revised Code. 328

(b) A person who is employed by a nonpublic school for which 329  
the state board of education prescribes minimum standards under 330  
section 3301.07 of the Revised Code and who is certificated in 331  
accordance with section 3301.071 of the Revised Code. 332

(7) "Community control sanction" has the same meaning as in 333  
section 2929.01 of the Revised Code. 334

(8) "Escorted visit" means an escorted visit granted under 335  
section 2967.27 of the Revised Code. 336

(9) "Post-release control" and "transitional control" have 337  
the same meanings as in section 2967.01 of the Revised Code. 338

(10) "Investigator of the bureau of criminal identification 339  
and investigation" has the same meaning as in section 2903.11 of 340  
the Revised Code. 341

(11) "Public utility worker" has the same meaning as in 342  
section 2903.01 of the Revised Code. 343

**Sec. 2929.04.** (A) Imposition of the death penalty for 344  
aggravated murder is precluded unless one or more of the following 345  
is specified in the indictment or count in the indictment pursuant 346  
to section 2941.14 of the Revised Code and proved beyond a 347  
reasonable doubt: 348

(1) The offense was the assassination of the president of the 349  
United States or a person in line of succession to the presidency, 350  
the governor or lieutenant governor of this state, the 351  
president-elect or vice president-elect of the United States, the 352  
governor-elect or lieutenant governor-elect of this state, or a 353  
candidate for any of the offices described in this division. For 354  
purposes of this division, a person is a candidate if the person 355  
has been nominated for election according to law, if the person 356  
has filed a petition or petitions according to law to have the 357  
person's name placed on the ballot in a primary or general 358

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 killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, or a public utility worker, as defined in section 2903.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer or a public utility worker 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 390  
specific purpose to kill a law enforcement officer or a public 391  
utility worker as so defined. 392

(7) The offense was committed while the offender was 393  
committing, attempting to commit, or fleeing immediately after 394  
committing or attempting to commit kidnapping, rape, aggravated 395  
arson, aggravated robbery, or aggravated burglary, and either the 396  
offender was the principal offender in the commission of the 397  
aggravated murder or, if not the principal offender, committed the 398  
aggravated murder with prior calculation and design. 399

(8) The victim of the aggravated murder was a witness to an 400  
offense who was purposely killed to prevent the victim's testimony 401  
in any criminal proceeding and the aggravated murder was not 402  
committed during the commission, attempted commission, or flight 403  
immediately after the commission or attempted commission of the 404  
offense to which the victim was a witness, or the victim of the 405  
aggravated murder was a witness to an offense and was purposely 406  
killed in retaliation for the victim's testimony in any criminal 407  
proceeding. 408

(9) The offender, in the commission of the offense, 409  
purposefully caused the death of another who was under thirteen 410  
years of age at the time of the commission of the offense, and 411  
either the offender was the principal offender in the commission 412  
of the offense or, if not the principal offender, committed the 413  
offense with prior calculation and design. 414

(10) The offense was committed while the offender was 415  
committing, attempting to commit, or fleeing immediately after 416  
committing or attempting to commit terrorism. 417

(B) If one or more of the aggravating circumstances listed in 418  
division (A) of this section is specified in the indictment or 419  
count in the indictment and proved beyond a reasonable doubt, and 420

if the offender did not raise the matter of age pursuant to 421  
section 2929.023 of the Revised Code or if the offender, after 422  
raising the matter of age, was found at trial to have been 423  
eighteen years of age or older at the time of the commission of 424  
the offense, the court, trial jury, or panel of three judges shall 425  
consider, and weigh against the aggravating circumstances proved 426  
beyond a reasonable doubt, the nature and circumstances of the 427  
offense, the history, character, and background of the offender, 428  
and all of the following factors: 429

(1) Whether the victim of the offense induced or facilitated 430  
it; 431

(2) Whether it is unlikely that the offense would have been 432  
committed, but for the fact that the offender was under duress, 433  
coercion, or strong provocation; 434

(3) Whether, at the time of committing the offense, the 435  
offender, because of a mental disease or defect, lacked 436  
substantial capacity to appreciate the criminality of the 437  
offender's conduct or to conform the offender's conduct to the 438  
requirements of the law; 439

(4) The youth of the offender; 440

(5) The offender's lack of a significant history of prior 441  
criminal convictions and delinquency adjudications; 442

(6) If the offender was a participant in the offense but not 443  
the principal offender, the degree of the offender's participation 444  
in the offense and the degree of the offender's participation in 445  
the acts that led to the death of the victim; 446

(7) Any other factors that are relevant to the issue of 447  
whether the offender should be sentenced to death. 448

(C) The defendant shall be given great latitude in the 449  
presentation of evidence of the factors listed in division (B) of 450

this section and of any other factors in mitigation of the 451  
imposition of the sentence of death. 452

The existence of any of the mitigating factors listed in 453  
division (B) of this section does not preclude the imposition of a 454  
sentence of death on the offender but shall be weighed pursuant to 455  
divisions (D)(2) and (3) of section 2929.03 of the Revised Code by 456  
the trial court, trial jury, or the panel of three judges against 457  
the aggravating circumstances the offender was found guilty of 458  
committing. 459

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