

As Reported by the House Criminal Justice Committee

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Sub. H. B. No. 118

Representative Fende

**Cosponsors: Representatives Combs, Yuko, O'Brien, Maag, Hackett, Buchy,
Mallory, Blessing, Szollosi, DeGeeter, Bulp, Boyd, Winburn**

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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, magistrate, or prosecutor is the victim, to 7
prohibit a person from threatening a judge, 8
magistrate, or prosecutor, and to make the killing 9
of a judge, magistrate, or prosecutor an 10
aggravating circumstance for the imposition of the 11
death penalty for aggravated murder. 12

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

Section 1. That sections 149.43, 2903.01, 2903.11, 2903.12, 13
2903.13, 2903.21, and 2929.04 be amended and section 2903.23 of 14
the Revised Code be enacted to read as follows: 15

Sec. 149.43. (A) As used in this section: 16

(1) "Public record" means records kept by any public office, 17
including, but not limited to, state, county, city, village, 18

township, and school district units, and records pertaining to the	19
delivery of educational services by an alternative school in this	20
state kept by the nonprofit or for-profit entity operating the	21
alternative school pursuant to section 3313.533 of the Revised	22
Code. "Public record" does not mean any of the following:	23
(a) Medical records;	24
(b) Records pertaining to probation and parole proceedings or	25
to proceedings related to the imposition of community control	26
sanctions and post-release control sanctions;	27
(c) Records pertaining to actions under section 2151.85 and	28
division (C) of section 2919.121 of the Revised Code and to	29
appeals of actions arising under those sections;	30
(d) Records pertaining to adoption proceedings, including the	31
contents of an adoption file maintained by the department of	32
health under section 3705.12 of the Revised Code;	33
(e) Information in a record contained in the putative father	34
registry established by section 3107.062 of the Revised Code,	35
regardless of whether the information is held by the department of	36
job and family services or, pursuant to section 3111.69 of the	37
Revised Code, the office of child support in the department or a	38
child support enforcement agency;	39
(f) Records listed in division (A) of section 3107.42 of the	40
Revised Code or specified in division (A) of section 3107.52 of	41
the Revised Code;	42
(g) Trial preparation records;	43
(h) Confidential law enforcement investigatory records;	44
(i) Records containing information that is confidential under	45
section 2710.03 or 4112.05 of the Revised Code;	46
(j) DNA records stored in the DNA database pursuant to	47
section 109.573 of the Revised Code;	48

(k) Inmate records released by the department of 49
rehabilitation and correction to the department of youth services 50
or a court of record pursuant to division (E) of section 5120.21 51
of the Revised Code; 52

(l) Records maintained by the department of youth services 53
pertaining to children in its custody released by the department 54
of youth services to the department of rehabilitation and 55
correction pursuant to section 5139.05 of the Revised Code; 56

(m) Intellectual property records; 57

(n) Donor profile records; 58

(o) Records maintained by the department of job and family 59
services pursuant to section 3121.894 of the Revised Code; 60

(p) Peace officer, parole officer, probation officer, 61
prosecuting attorney, assistant prosecuting attorney, correctional 62
employee, youth services employee, firefighter, EMT, or 63
investigator of the bureau of criminal identification and 64
investigation residential and familial information; 65

(q) In the case of a county hospital operated pursuant to 66
Chapter 339. of the Revised Code or a municipal hospital operated 67
pursuant to Chapter 749. of the Revised Code, information that 68
constitutes a trade secret, as defined in section 1333.61 of the 69
Revised Code; 70

(r) Information pertaining to the recreational activities of 71
a person under the age of eighteen; 72

(s) Records provided to, statements made by review board 73
members during meetings of, and all work products of a child 74
fatality review board acting under sections 307.621 to 307.629 of 75
the Revised Code, and child fatality review data submitted by the 76
child fatality review board to the department of health or a 77
national child death review database, other than the report 78

prepared pursuant to division (A) of section 307.626 of the	79
Revised Code;	80
(t) Records provided to and statements made by the executive	81
director of a public children services agency or a prosecuting	82
attorney acting pursuant to section 5153.171 of the Revised Code	83
other than the information released under that section;	84
(u) Test materials, examinations, or evaluation tools used in	85
an examination for licensure as a nursing home administrator that	86
the board of examiners of nursing home administrators administers	87
under section 4751.04 of the Revised Code or contracts under that	88
section with a private or government entity to administer;	89
(v) Records the release of which is prohibited by state or	90
federal law;	91
(w) Proprietary information of or relating to any person that	92
is submitted to or compiled by the Ohio venture capital authority	93
created under section 150.01 of the Revised Code;	94
(x) Information reported and evaluations conducted pursuant	95
to section 3701.072 of the Revised Code;	96
(y) Financial statements and data any person submits for any	97
purpose to the Ohio housing finance agency or the controlling	98
board in connection with applying for, receiving, or accounting	99
for financial assistance from the agency, and information that	100
identifies any individual who benefits directly or indirectly from	101
financial assistance from the agency;	102
(z) Records listed in section 5101.29 of the Revised Code.	103
(aa) Discharges recorded with a county recorder under section	104
317.24 of the Revised Code, as specified in division (B)(2) of	105
that section.	106
(2) "Confidential law enforcement investigatory record" means	107
any record that pertains to a law enforcement matter of a	108

criminal, quasi-criminal, civil, or administrative nature, but 109
only to the extent that the release of the record would create a 110
high probability of disclosure of any of the following: 111

(a) The identity of a suspect who has not been charged with 112
the offense to which the record pertains, or of an information 113
source or witness to whom confidentiality has been reasonably 114
promised; 115

(b) Information provided by an information source or witness 116
to whom confidentiality has been reasonably promised, which 117
information would reasonably tend to disclose the source's or 118
witness's identity; 119

(c) Specific confidential investigatory techniques or 120
procedures or specific investigatory work product; 121

(d) Information that would endanger the life or physical 122
safety of law enforcement personnel, a crime victim, a witness, or 123
a confidential information source. 124

(3) "Medical record" means any document or combination of 125
documents, except births, deaths, and the fact of admission to or 126
discharge from a hospital, that pertains to the medical history, 127
diagnosis, prognosis, or medical condition of a patient and that 128
is generated and maintained in the process of medical treatment. 129

(4) "Trial preparation record" means any record that contains 130
information that is specifically compiled in reasonable 131
anticipation of, or in defense of, a civil or criminal action or 132
proceeding, including the independent thought processes and 133
personal trial preparation of an attorney. 134

(5) "Intellectual property record" means a record, other than 135
a financial or administrative record, that is produced or 136
collected by or for faculty or staff of a state institution of 137
higher learning in the conduct of or as a result of study or 138
research on an educational, commercial, scientific, artistic, 139

technical, or scholarly issue, regardless of whether the study or 140
research was sponsored by the institution alone or in conjunction 141
with a governmental body or private concern, and that has not been 142
publicly released, published, or patented. 143

(6) "Donor profile record" means all records about donors or 144
potential donors to a public institution of higher education 145
except the names and reported addresses of the actual donors and 146
the date, amount, and conditions of the actual donation. 147

(7) "Peace officer, parole officer, probation officer, 148
prosecuting attorney, assistant prosecuting attorney, correctional 149
employee, youth services employee, firefighter, EMT, or 150
investigator of the bureau of criminal identification and 151
investigation residential and familial information" means any 152
information that discloses any of the following about a peace 153
officer, parole officer, probation officer, prosecuting attorney, 154
assistant prosecuting attorney, correctional employee, youth 155
services employee, firefighter, EMT, or investigator of the bureau 156
of criminal identification and investigation: 157

(a) The address of the actual personal residence of a peace 158
officer, parole officer, probation officer, assistant prosecuting 159
attorney, correctional employee, youth services employee, 160
firefighter, EMT, or an investigator of the bureau of criminal 161
identification and investigation, except for the state or 162
political subdivision in which the peace officer, parole officer, 163
probation officer, assistant prosecuting attorney, correctional 164
employee, youth services employee, firefighter, EMT, or 165
investigator of the bureau of criminal identification and 166
investigation resides; 167

(b) Information compiled from referral to or participation in 168
an employee assistance program; 169

(c) The social security number, the residential telephone 170

number, any bank account, debit card, charge card, or credit card 171
number, or the emergency telephone number of, or any medical 172
information pertaining to, a peace officer, parole officer, 173
probation officer, prosecuting attorney, assistant prosecuting 174
attorney, correctional employee, youth services employee, 175
firefighter, EMT, or investigator of the bureau of criminal 176
identification and investigation; 177

(d) The name of any beneficiary of employment benefits, 178
including, but not limited to, life insurance benefits, provided 179
to a peace officer, parole officer, probation officer, prosecuting 180
attorney, assistant prosecuting attorney, correctional employee, 181
youth services employee, firefighter, EMT, or investigator of the 182
bureau of criminal identification and investigation by the peace 183
officer's, parole officer's, probation officer's, prosecuting 184
attorney's, assistant prosecuting attorney's, correctional 185
employee's, youth services employee's, firefighter's, EMT's, or 186
investigator of the bureau of criminal identification and 187
investigation's employer; 188

(e) The identity and amount of any charitable or employment 189
benefit deduction made by the peace officer's, parole officer's, 190
probation officer's, prosecuting attorney's, assistant prosecuting 191
attorney's, correctional employee's, youth services employee's, 192
firefighter's, EMT's, or investigator of the bureau of criminal 193
identification and investigation's employer from the peace 194
officer's, parole officer's, probation officer's, prosecuting 195
attorney's, assistant prosecuting attorney's, correctional 196
employee's, youth services employee's, firefighter's, EMT's, or 197
investigator of the bureau of criminal identification and 198
investigation's compensation unless the amount of the deduction is 199
required by state or federal law; 200

(f) The name, the residential address, the name of the 201
employer, the address of the employer, the social security number, 202

the residential telephone number, any bank account, debit card, 203
charge card, or credit card number, or the emergency telephone 204
number of the spouse, a former spouse, or any child of a peace 205
officer, parole officer, probation officer, prosecuting attorney, 206
assistant prosecuting attorney, correctional employee, youth 207
services employee, firefighter, EMT, or investigator of the bureau 208
of criminal identification and investigation; 209

(g) A photograph of a peace officer who holds a position or 210
has an assignment that may include undercover or plain clothes 211
positions or assignments as determined by the peace officer's 212
appointing authority. 213

As used in divisions (A)(7) and (B)(9) of this section, 214
"peace officer" has the same meaning as in section 109.71 of the 215
Revised Code and also includes the superintendent and troopers of 216
the state highway patrol; it does not include the sheriff of a 217
county or a supervisory employee who, in the absence of the 218
sheriff, is authorized to stand in for, exercise the authority of, 219
and perform the duties of the sheriff. 220

As used in divisions (A)(7) and (B)(5) of this section, 221
"correctional employee" means any employee of the department of 222
rehabilitation and correction who in the course of performing the 223
employee's job duties has or has had contact with inmates and 224
persons under supervision. 225

As used in divisions (A)(7) and (B)(5) of this section, 226
"youth services employee" means any employee of the department of 227
youth services who in the course of performing the employee's job 228
duties has or has had contact with children committed to the 229
custody of the department of youth services. 230

As used in divisions (A)(7) and (B)(9) of this section, 231
"firefighter" means any regular, paid or volunteer, member of a 232
lawfully constituted fire department of a municipal corporation, 233

township, fire district, or village.	234
As used in divisions (A)(7) and (B)(9) of this section, "EMT"	235
means EMTs-basic, EMTs-I, and paramedics that provide emergency	236
medical services for a public emergency medical service	237
organization. "Emergency medical service organization,"	238
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as in	239
section 4765.01 of the Revised Code.	240
As used in divisions (A)(7) and (B)(9) of this section,	241
"investigator of the bureau of criminal identification and	242
investigation" has the meaning defined in section 2903.11 of the	243
Revised Code.	244
(8) "Information pertaining to the recreational activities of	245
a person under the age of eighteen" means information that is kept	246
in the ordinary course of business by a public office, that	247
pertains to the recreational activities of a person under the age	248
of eighteen years, and that discloses any of the following:	249
(a) The address or telephone number of a person under the age	250
of eighteen or the address or telephone number of that person's	251
parent, guardian, custodian, or emergency contact person;	252
(b) The social security number, birth date, or photographic	253
image of a person under the age of eighteen;	254
(c) Any medical record, history, or information pertaining to	255
a person under the age of eighteen;	256
(d) Any additional information sought or required about a	257
person under the age of eighteen for the purpose of allowing that	258
person to participate in any recreational activity conducted or	259
sponsored by a public office or to use or obtain admission	260
privileges to any recreational facility owned or operated by a	261
public office.	262
(9) "Community control sanction" has the same meaning as in	263

section 2929.01 of the Revised Code. 264

(10) "Post-release control sanction" has the same meaning as 265
in section 2967.01 of the Revised Code. 266

(11) "Redaction" means obscuring or deleting any information 267
that is exempt from the duty to permit public inspection or 268
copying from an item that otherwise meets the definition of a 269
"record" in section 149.011 of the Revised Code. 270

(12) "Designee" and "elected official" have the same meanings 271
as in section 109.43 of the Revised Code. 272

(B)(1) Upon request and subject to division (B)(8) of this 273
section, all public records responsive to the request shall be 274
promptly prepared and made available for inspection to any person 275
at all reasonable times during regular business hours. Subject to 276
division (B)(8) of this section, upon request, a public office or 277
person responsible for public records shall make copies of the 278
requested public record available at cost and within a reasonable 279
period of time. If a public record contains information that is 280
exempt from the duty to permit public inspection or to copy the 281
public record, the public office or the person responsible for the 282
public record shall make available all of the information within 283
the public record that is not exempt. When making that public 284
record available for public inspection or copying that public 285
record, the public office or the person responsible for the public 286
record shall notify the requester of any redaction or make the 287
redaction plainly visible. A redaction shall be deemed a denial of 288
a request to inspect or copy the redacted information, except if 289
federal or state law authorizes or requires a public office to 290
make the redaction. 291

(2) To facilitate broader access to public records, a public 292
office or the person responsible for public records shall organize 293
and maintain public records in a manner that they can be made 294

available for inspection or copying in accordance with division 295
(B) of this section. A public office also shall have available a 296
copy of its current records retention schedule at a location 297
readily available to the public. If a requester makes an ambiguous 298
or overly broad request or has difficulty in making a request for 299
copies or inspection of public records under this section such 300
that the public office or the person responsible for the requested 301
public record cannot reasonably identify what public records are 302
being requested, the public office or the person responsible for 303
the requested public record may deny the request but shall provide 304
the requester with an opportunity to revise the request by 305
informing the requester of the manner in which records are 306
maintained by the public office and accessed in the ordinary 307
course of the public office's or person's duties. 308

(3) If a request is ultimately denied, in part or in whole, 309
the public office or the person responsible for the requested 310
public record shall provide the requester with an explanation, 311
including legal authority, setting forth why the request was 312
denied. If the initial request was provided in writing, the 313
explanation also shall be provided to the requester in writing. 314
The explanation shall not preclude the public office or the person 315
responsible for the requested public record from relying upon 316
additional reasons or legal authority in defending an action 317
commenced under division (C) of this section. 318

(4) Unless specifically required or authorized by state or 319
federal law or in accordance with division (B) of this section, no 320
public office or person responsible for public records may limit 321
or condition the availability of public records by requiring 322
disclosure of the requester's identity or the intended use of the 323
requested public record. Any requirement that the requester 324
disclose the requestor's identity or the intended use of the 325
requested public record constitutes a denial of the request. 326

(5) A public office or person responsible for public records 327
may ask a requester to make the request in writing, may ask for 328
the requester's identity, and may inquire about the intended use 329
of the information requested, but may do so only after disclosing 330
to the requester that a written request is not mandatory and that 331
the requester may decline to reveal the requester's identity or 332
the intended use and when a written request or disclosure of the 333
identity or intended use would benefit the requester by enhancing 334
the ability of the public office or person responsible for public 335
records to identify, locate, or deliver the public records sought 336
by the requester. 337

(6) If any person chooses to obtain a copy of a public record 338
in accordance with division (B) of this section, the public office 339
or person responsible for the public record may require that 340
person to pay in advance the cost involved in providing the copy 341
of the public record in accordance with the choice made by the 342
person seeking the copy under this division. The public office or 343
the person responsible for the public record shall permit that 344
person to choose to have the public record duplicated upon paper, 345
upon the same medium upon which the public office or person 346
responsible for the public record keeps it, or upon any other 347
medium upon which the public office or person responsible for the 348
public record determines that it reasonably can be duplicated as 349
an integral part of the normal operations of the public office or 350
person responsible for the public record. When the person seeking 351
the copy makes a choice under this division, the public office or 352
person responsible for the public record shall provide a copy of 353
it in accordance with the choice made by the person seeking the 354
copy. Nothing in this section requires a public office or person 355
responsible for the public record to allow the person seeking a 356
copy of the public record to make the copies of the public record. 357

(7) Upon a request made in accordance with division (B) of 358

this section and subject to division (B)(6) of this section, a 359
public office or person responsible for public records shall 360
transmit a copy of a public record to any person by United States 361
mail or by any other means of delivery or transmission within a 362
reasonable period of time after receiving the request for the 363
copy. The public office or person responsible for the public 364
record may require the person making the request to pay in advance 365
the cost of postage if the copy is transmitted by United States 366
mail or the cost of delivery if the copy is transmitted other than 367
by United States mail, and to pay in advance the costs incurred 368
for other supplies used in the mailing, delivery, or transmission. 369

Any public office may adopt a policy and procedures that it 370
will follow in transmitting, within a reasonable period of time 371
after receiving a request, copies of public records by United 372
States mail or by any other means of delivery or transmission 373
pursuant to this division. A public office that adopts a policy 374
and procedures under this division shall comply with them in 375
performing its duties under this division. 376

In any policy and procedures adopted under this division, a 377
public office may limit the number of records requested by a 378
person that the office will transmit by United States mail to ten 379
per month, unless the person certifies to the office in writing 380
that the person does not intend to use or forward the requested 381
records, or the information contained in them, for commercial 382
purposes. For purposes of this division, "commercial" shall be 383
narrowly construed and does not include reporting or gathering 384
news, reporting or gathering information to assist citizen 385
oversight or understanding of the operation or activities of 386
government, or nonprofit educational research. 387

(8) A public office or person responsible for public records 388
is not required to permit a person who is incarcerated pursuant to 389
a criminal conviction or a juvenile adjudication to inspect or to 390

obtain a copy of any public record concerning a criminal 391
investigation or prosecution or concerning what would be a 392
criminal investigation or prosecution if the subject of the 393
investigation or prosecution were an adult, unless the request to 394
inspect or to obtain a copy of the record is for the purpose of 395
acquiring information that is subject to release as a public 396
record under this section and the judge who imposed the sentence 397
or made the adjudication with respect to the person, or the 398
judge's successor in office, finds that the information sought in 399
the public record is necessary to support what appears to be a 400
justiciable claim of the person. 401

(9) Upon written request made and signed by a journalist on 402
or after December 16, 1999, a public office, or person responsible 403
for public records, having custody of the records of the agency 404
employing a specified peace officer, parole officer, prosecuting 405
attorney, assistant prosecuting attorney, correctional employee, 406
youth services employee, firefighter, EMT, or investigator of the 407
bureau of criminal identification and investigation shall disclose 408
to the journalist the address of the actual personal residence of 409
the peace officer, parole officer, prosecuting attorney, assistant 410
prosecuting attorney, correctional employee, youth services 411
employee, firefighter, EMT, or investigator of the bureau of 412
criminal identification and investigation and, if the peace 413
officer's, parole officer's, prosecuting attorney's, assistant 414
prosecuting attorney's, correctional employee's, youth services 415
employee's, firefighter's, EMT's, or investigator of the bureau of 416
criminal identification and investigation's spouse, former spouse, 417
or child is employed by a public office, the name and address of 418
the employer of the peace officer's, parole officer's, prosecuting 419
attorney's, assistant prosecuting attorney's, correctional 420
employee's, youth services employee's, firefighter's, EMT's, or 421
investigator of the bureau of criminal identification and 422
investigation's spouse, former spouse, or child. The request shall 423

include the journalist's name and title and the name and address 424
of the journalist's employer and shall state that disclosure of 425
the information sought would be in the public interest. 426

As used in this division, "journalist" means a person engaged 427
in, connected with, or employed by any news medium, including a 428
newspaper, magazine, press association, news agency, or wire 429
service, a radio or television station, or a similar medium, for 430
the purpose of gathering, processing, transmitting, compiling, 431
editing, or disseminating information for the general public. 432

(C)(1) If a person allegedly is aggrieved by the failure of a 433
public office or the person responsible for public records to 434
promptly prepare a public record and to make it available to the 435
person for inspection in accordance with division (B) of this 436
section or by any other failure of a public office or the person 437
responsible for public records to comply with an obligation in 438
accordance with division (B) of this section, the person allegedly 439
aggrieved may commence a mandamus action to obtain a judgment that 440
orders the public office or the person responsible for the public 441
record to comply with division (B) of this section, that awards 442
court costs and reasonable attorney's fees to the person that 443
instituted the mandamus action, and, if applicable, that includes 444
an order fixing statutory damages under division (C)(1) of this 445
section. The mandamus action may be commenced in the court of 446
common pleas of the county in which division (B) of this section 447
allegedly was not complied with, in the supreme court pursuant to 448
its original jurisdiction under Section 2 of Article IV, Ohio 449
Constitution, or in the court of appeals for the appellate 450
district in which division (B) of this section allegedly was not 451
complied with pursuant to its original jurisdiction under Section 452
3 of Article IV, Ohio Constitution. 453

If a requestor transmits a written request by hand delivery 454
or certified mail to inspect or receive copies of any public 455

record in a manner that fairly describes the public record or 456
class of public records to the public office or person responsible 457
for the requested public records, except as otherwise provided in 458
this section, the requestor shall be entitled to recover the 459
amount of statutory damages set forth in this division if a court 460
determines that the public office or the person responsible for 461
public records failed to comply with an obligation in accordance 462
with division (B) of this section. 463

The amount of statutory damages shall be fixed at one hundred 464
dollars for each business day during which the public office or 465
person responsible for the requested public records failed to 466
comply with an obligation in accordance with division (B) of this 467
section, beginning with the day on which the requester files a 468
mandamus action to recover statutory damages, up to a maximum of 469
one thousand dollars. The award of statutory damages shall not be 470
construed as a penalty, but as compensation for injury arising 471
from lost use of the requested information. The existence of this 472
injury shall be conclusively presumed. The award of statutory 473
damages shall be in addition to all other remedies authorized by 474
this section. 475

The court may reduce an award of statutory damages or not 476
award statutory damages if the court determines both of the 477
following: 478

(a) That, based on the ordinary application of statutory law 479
and case law as it existed at the time of the conduct or 480
threatened conduct of the public office or person responsible for 481
the requested public records that allegedly constitutes a failure 482
to comply with an obligation in accordance with division (B) of 483
this section and that was the basis of the mandamus action, a 484
well-informed public office or person responsible for the 485
requested public records reasonably would believe that the conduct 486
or threatened conduct of the public office or person responsible 487

for the requested public records did not constitute a failure to 488
comply with an obligation in accordance with division (B) of this 489
section; 490

(b) That a well-informed public office or person responsible 491
for the requested public records reasonably would believe that the 492
conduct or threatened conduct of the public office or person 493
responsible for the requested public records would serve the 494
public policy that underlies the authority that is asserted as 495
permitting that conduct or threatened conduct. 496

(2)(a) If the court issues a writ of mandamus that orders the 497
public office or the person responsible for the public record to 498
comply with division (B) of this section and determines that the 499
circumstances described in division (C)(1) of this section exist, 500
the court shall determine and award to the relator all court 501
costs. 502

(b) If the court renders a judgment that orders the public 503
office or the person responsible for the public record to comply 504
with division (B) of this section, the court may award reasonable 505
attorney's fees subject to reduction as described in division 506
(C)(2)(c) of this section. The court shall award reasonable 507
attorney's fees, subject to reduction as described in division 508
(C)(2)(c) of this section when either of the following applies: 509

(i) The public office or the person responsible for the 510
public records failed to respond affirmatively or negatively to 511
the public records request in accordance with the time allowed 512
under division (B) of this section. 513

(ii) The public office or the person responsible for the 514
public records promised to permit the relator to inspect or 515
receive copies of the public records requested within a specified 516
period of time but failed to fulfill that promise within that 517
specified period of time. 518

(c) Court costs and reasonable attorney's fees awarded under 519
this section shall be construed as remedial and not punitive. 520
Reasonable attorney's fees shall include reasonable fees incurred 521
to produce proof of the reasonableness and amount of the fees and 522
to otherwise litigate entitlement to the fees. The court may 523
reduce an award of attorney's fees to the relator or not award 524
attorney's fees to the relator if the court determines both of the 525
following: 526

(i) That, based on the ordinary application of statutory law 527
and case law as it existed at the time of the conduct or 528
threatened conduct of the public office or person responsible for 529
the requested public records that allegedly constitutes a failure 530
to comply with an obligation in accordance with division (B) of 531
this section and that was the basis of the mandamus action, a 532
well-informed public office or person responsible for the 533
requested public records reasonably would believe that the conduct 534
or threatened conduct of the public office or person responsible 535
for the requested public records did not constitute a failure to 536
comply with an obligation in accordance with division (B) of this 537
section; 538

(ii) That a well-informed public office or person responsible 539
for the requested public records reasonably would believe that the 540
conduct or threatened conduct of the public office or person 541
responsible for the requested public records as described in 542
division (C)(2)(c)(i) of this section would serve the public 543
policy that underlies the authority that is asserted as permitting 544
that conduct or threatened conduct. 545

(D) Chapter 1347. of the Revised Code does not limit the 546
provisions of this section. 547

(E)(1) To ensure that all employees of public offices are 548
appropriately educated about a public office's obligations under 549
division (B) of this section, all elected officials or their 550

appropriate designees shall attend training approved by the 551
attorney general as provided in section 109.43 of the Revised 552
Code. In addition, all public offices shall adopt a public records 553
policy in compliance with this section for responding to public 554
records requests. In adopting a public records policy under this 555
division, a public office may obtain guidance from the model 556
public records policy developed and provided to the public office 557
by the attorney general under section 109.43 of the Revised Code. 558
Except as otherwise provided in this section, the policy may not 559
limit the number of public records that the public office will 560
make available to a single person, may not limit the number of 561
public records that it will make available during a fixed period 562
of time, and may not establish a fixed period of time before it 563
will respond to a request for inspection or copying of public 564
records, unless that period is less than eight hours. 565

(2) The public office shall distribute the public records 566
policy adopted by the public office under division (E)(1) of this 567
section to the employee of the public office who is the records 568
custodian or records manager or otherwise has custody of the 569
records of that office. The public office shall require that 570
employee to acknowledge receipt of the copy of the public records 571
policy. The public office shall create a poster that describes its 572
public records policy and shall post the poster in a conspicuous 573
place in the public office and in all locations where the public 574
office has branch offices. The public office may post its public 575
records policy on the internet web site of the public office if 576
the public office maintains an internet web site. A public office 577
that has established a manual or handbook of its general policies 578
and procedures for all employees of the public office shall 579
include the public records policy of the public office in the 580
manual or handbook. 581

(F)(1) The bureau of motor vehicles may adopt rules pursuant 582

to Chapter 119. of the Revised Code to reasonably limit the number 583
of bulk commercial special extraction requests made by a person 584
for the same records or for updated records during a calendar 585
year. The rules may include provisions for charges to be made for 586
bulk commercial special extraction requests for the actual cost of 587
the bureau, plus special extraction costs, plus ten per cent. The 588
bureau may charge for expenses for redacting information, the 589
release of which is prohibited by law. 590

(2) As used in division (F)(1) of this section: 591

(a) "Actual cost" means the cost of depleted supplies, 592
records storage media costs, actual mailing and alternative 593
delivery costs, or other transmitting costs, and any direct 594
equipment operating and maintenance costs, including actual costs 595
paid to private contractors for copying services. 596

(b) "Bulk commercial special extraction request" means a 597
request for copies of a record for information in a format other 598
than the format already available, or information that cannot be 599
extracted without examination of all items in a records series, 600
class of records, or data base by a person who intends to use or 601
forward the copies for surveys, marketing, solicitation, or resale 602
for commercial purposes. "Bulk commercial special extraction 603
request" does not include a request by a person who gives 604
assurance to the bureau that the person making the request does 605
not intend to use or forward the requested copies for surveys, 606
marketing, solicitation, or resale for commercial purposes. 607

(c) "Commercial" means profit-seeking production, buying, or 608
selling of any good, service, or other product. 609

(d) "Special extraction costs" means the cost of the time 610
spent by the lowest paid employee competent to perform the task, 611
the actual amount paid to outside private contractors employed by 612
the bureau, or the actual cost incurred to create computer 613

programs to make the special extraction. "Special extraction costs" include any charges paid to a public agency for computer or records services.

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

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

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

(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, prosecutor, or law enforcement officer whom the offender knows or has reasonable cause to know is a judge, magistrate, prosecutor, 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. 644

(2) It is the offender's specific purpose to kill a judge, 645
magistrate, prosecutor, or law enforcement officer. 646

(F) Whoever violates this section is guilty of aggravated 647
murder, and shall be punished as provided in section 2929.02 of 648
the Revised Code. 649

(G) As used in this section: 650

(1) "Detention" has the same meaning as in section 2921.01 of 651
the Revised Code. 652

(2) "Law enforcement officer" has the same meaning as in 653
section 2911.01 of the Revised Code. 654

(3) "Judge" means a judge of a court created under the 655
constitution or statutes of this state or of a United States court 656
located in this state. 657

(4) "Magistrate" means a magistrate of a court created under 658
the constitution or statutes of this state or of a United States 659
court located in this state. 660

(5) "Prosecutor" has the same meaning as in section 2935.01 661
of the Revised Code. 662

Sec. 2903.11. (A) No person shall knowingly do either of the 663
following: 664

(1) Cause serious physical harm to another or to another's 665
unborn; 666

(2) Cause or attempt to cause physical harm to another or to 667
another's unborn by means of a deadly weapon or dangerous 668
ordnance. 669

(B) No person, with knowledge that the person has tested 670
positive as a carrier of a virus that causes acquired 671
immunodeficiency syndrome, shall knowingly do any of the 672

following: 673

(1) Engage in sexual conduct with another person without 674
disclosing that knowledge to the other person prior to engaging in 675
the sexual conduct; 676

(2) Engage in sexual conduct with a person whom the offender 677
knows or has reasonable cause to believe lacks the mental capacity 678
to appreciate the significance of the knowledge that the offender 679
has tested positive as a carrier of a virus that causes acquired 680
immunodeficiency syndrome; 681

(3) Engage in sexual conduct with a person under eighteen 682
years of age who is not the spouse of the offender. 683

(C) The prosecution of a person under this section does not 684
preclude prosecution of that person under section 2907.02 of the 685
Revised Code. 686

(D)(1)(a) Whoever violates this section is guilty of 687
felonious assault. Except as otherwise provided in this division 688
or division (D)(1)(b) of this section, felonious assault is a 689
felony of the second degree. If the victim of a violation of 690
division (A) of this section is a judge, magistrate, prosecutor, 691
peace officer, or ~~an~~ investigator of the bureau of criminal 692
identification and investigation, felonious assault is a felony of 693
the first degree. 694

(b) Regardless of whether the felonious assault is a felony 695
of the first or second degree under division (D)(1)(a) of this 696
section, if the offender also is convicted of or pleads guilty to 697
a specification as described in section 2941.1423 of the Revised 698
Code that was included in the indictment, count in the indictment, 699
or information charging the offense, except as otherwise provided 700
in this division or unless a longer prison term is required under 701
any other provision of law, the court shall sentence the offender 702
to a mandatory prison term as provided in division (D)(8) of 703

section 2929.14 of the Revised Code. If the victim of the offense 704
is a judge, magistrate, prosecutor, peace officer, or an 705
investigator of the bureau of criminal identification and 706
investigation, and if the victim suffered serious physical harm as 707
a result of the commission of the offense, felonious assault is a 708
felony of the first degree, and the court, pursuant to division 709
(F) of section 2929.13 of the Revised Code, shall impose as a 710
mandatory prison term one of the prison terms prescribed for a 711
felony of the first degree. 712

(2) In addition to any other sanctions imposed pursuant to 713
division (D)(1) of this section for felonious assault committed in 714
violation of division (A)(2) of this section, if the deadly weapon 715
used in the commission of the violation is a motor vehicle, the 716
court shall impose upon the offender a class two suspension of the 717
offender's driver's license, commercial driver's license, 718
temporary instruction permit, probationary license, or nonresident 719
operating privilege as specified in division (A)(2) of section 720
4510.02 of the Revised Code. 721

(E) As used in this section: 722

(1) "Deadly weapon" and "dangerous ordnance" have the same 723
meanings as in section 2923.11 of the Revised Code. 724

(2) "Motor vehicle" has the same meaning as in section 725
4501.01 of the Revised Code. 726

(3) "Peace officer" has the same meaning as in section 727
2935.01 of the Revised Code. 728

(4) "Sexual conduct" has the same meaning as in section 729
2907.01 of the Revised Code, except that, as used in this section, 730
it does not include the insertion of an instrument, apparatus, or 731
other object that is not a part of the body into the vaginal or 732
anal opening of another, unless the offender knew at the time of 733
the insertion that the instrument, apparatus, or other object 734

carried the offender's bodily fluid. 735

(5) "Investigator of the bureau of criminal identification 736
and investigation" means an investigator of the bureau of criminal 737
identification and investigation who is commissioned by the 738
superintendent of the bureau as a special agent for the purpose of 739
assisting law enforcement officers or providing emergency 740
assistance to peace officers pursuant to authority granted under 741
section 109.541 of the Revised Code. 742

(6) "Investigator" has the same meaning as in section 109.541 743
of the Revised Code. 744

(7) "Judge" and "magistrate" have the same meanings as in 745
section 2903.01 of the Revised Code. 746

(8) "Prosecutor" has the same meaning as in section 2935.01 747
of the Revised Code. 748

Sec. 2903.12. (A) No person, while under the influence of 749
sudden passion or in a sudden fit of rage, either of which is 750
brought on by serious provocation occasioned by the victim that is 751
reasonably sufficient to incite the person into using deadly 752
force, shall knowingly: 753

(1) Cause serious physical harm to another or to another's 754
unborn; 755

(2) Cause or attempt to cause physical harm to another or to 756
another's unborn by means of a deadly weapon or dangerous 757
ordnance, as defined in section 2923.11 of the Revised Code. 758

(B) Whoever violates this section is guilty of aggravated 759
assault. Except as otherwise provided in this division, aggravated 760
assault is a felony of the fourth degree. If the victim of the 761
offense is a judge, magistrate, prosecutor, peace officer, or an 762
investigator of the bureau of criminal identification and 763
investigation, aggravated assault is a felony of the third degree. 764

Regardless of whether the offense is a felony of the third or 765
fourth degree under this division, if the offender also is 766
convicted of or pleads guilty to a specification as described in 767
section 2941.1423 of the Revised Code that was included in the 768
indictment, count in the indictment, or information charging the 769
offense, except as otherwise provided in this division, the court 770
shall sentence the offender to a mandatory prison term as provided 771
in division (D)(8) of section 2929.14 of the Revised Code. If the 772
victim of the offense is a judge, magistrate, prosecutor, peace 773
officer, or an investigator of the bureau of criminal 774
identification and investigation, and if the victim suffered 775
serious physical harm as a result of the commission of the 776
offense, aggravated assault is a felony of the third degree, and 777
the court, pursuant to division (F) of section 2929.13 of the 778
Revised Code, shall impose as a mandatory prison term one of the 779
prison terms prescribed for a felony of the third degree. 780

(C) As used in this section: 781

(1) "Investigator of the bureau of criminal identification 782
and investigation" has the same meaning as in section 2903.11 of 783
the Revised Code. 784

(2) "Peace officer" has the same meaning as in section 785
2935.01 of the Revised Code. 786

(3) "Judge" and "magistrate" have the same meanings as in 787
section 2903.01 of the Revised Code. 788

(4) "Prosecutor" has the same meaning as in section 2935.01 789
of the Revised Code. 790

Sec. 2903.13. (A) No person shall knowingly cause or attempt 791
to cause physical harm to another or to another's unborn. 792

(B) No person shall recklessly cause serious physical harm to 793
another or to another's unborn. 794

(C) Whoever violates this section is guilty of assault, and 795
the court shall sentence the offender as provided in this division 796
and divisions (C)(1), (2), (3), (4), (5), and (6) of this section. 797
Except as otherwise provided in division (C)(1), (2), (3), (4), or 798
(5) of this section, assault is a misdemeanor of the first degree. 799

(1) Except as otherwise provided in this division, if the 800
offense is committed by a caretaker against a functionally 801
impaired person under the caretaker's care, assault is a felony of 802
the fourth degree. If the offense is committed by a caretaker 803
against a functionally impaired person under the caretaker's care, 804
if the offender previously has been convicted of or pleaded guilty 805
to a violation of this section or section 2903.11 or 2903.16 of 806
the Revised Code, and if in relation to the previous conviction 807
the offender was a caretaker and the victim was a functionally 808
impaired person under the offender's care, assault is a felony of 809
the third degree. 810

(2) If the offense is committed in any of the following 811
circumstances, assault is a felony of the fifth degree: 812

(a) The offense occurs in or on the grounds of a state 813
correctional institution or an institution of the department of 814
youth services, the victim of the offense is an employee of the 815
department of rehabilitation and correction, the department of 816
youth services, or a probation department or is on the premises of 817
the particular institution for business purposes or as a visitor, 818
and the offense is committed by a person incarcerated in the state 819
correctional institution, by a person institutionalized in the 820
department of youth services institution pursuant to a commitment 821
to the department of youth services, by a parolee, by an offender 822
under transitional control, under a community control sanction, or 823
on an escorted visit, by a person under post-release control, or 824
by an offender under any other type of supervision by a government 825
agency. 826

(b) The offense occurs in or on the grounds of a local 827
correctional facility, the victim of the offense is an employee of 828
the local correctional facility or a probation department or is on 829
the premises of the facility for business purposes or as a 830
visitor, and the offense is committed by a person who is under 831
custody in the facility subsequent to the person's arrest for any 832
crime or delinquent act, subsequent to the person's being charged 833
with or convicted of any crime, or subsequent to the person's 834
being alleged to be or adjudicated a delinquent child. 835

(c) The offense occurs off the grounds of a state 836
correctional institution and off the grounds of an institution of 837
the department of youth services, the victim of the offense is an 838
employee of the department of rehabilitation and correction, the 839
department of youth services, or a probation department, the 840
offense occurs during the employee's official work hours and while 841
the employee is engaged in official work responsibilities, and the 842
offense is committed by a person incarcerated in a state 843
correctional institution or institutionalized in the department of 844
youth services who temporarily is outside of the institution for 845
any purpose, by a parolee, by an offender under transitional 846
control, under a community control sanction, or on an escorted 847
visit, by a person under post-release control, or by an offender 848
under any other type of supervision by a government agency. 849

(d) The offense occurs off the grounds of a local 850
correctional facility, the victim of the offense is an employee of 851
the local correctional facility or a probation department, the 852
offense occurs during the employee's official work hours and while 853
the employee is engaged in official work responsibilities, and the 854
offense is committed by a person who is under custody in the 855
facility subsequent to the person's arrest for any crime or 856
delinquent act, subsequent to the person being charged with or 857
convicted of any crime, or subsequent to the person being alleged 858

to be or adjudicated a delinquent child and who temporarily is 859
outside of the facility for any purpose or by a parolee, by an 860
offender under transitional control, under a community control 861
sanction, or on an escorted visit, by a person under post-release 862
control, or by an offender under any other type of supervision by 863
a government agency. 864

(e) The victim of the offense is a school teacher or 865
administrator or a school bus operator, and the offense occurs in 866
a school, on school premises, in a school building, on a school 867
bus, or while the victim is outside of school premises or a school 868
bus and is engaged in duties or official responsibilities 869
associated with the victim's employment or position as a school 870
teacher or administrator or a school bus operator, including, but 871
not limited to, driving, accompanying, or chaperoning students at 872
or on class or field trips, athletic events, or other school 873
extracurricular activities or functions outside of school 874
premises. 875

(3) If the victim of the offense is a judge, magistrate, 876
prosecutor, peace officer, or ~~an~~ investigator of the bureau of 877
criminal identification and investigation, a firefighter, or a 878
person performing emergency medical service, while in the 879
performance of their official duties, assault is a felony of the 880
fourth degree. 881

(4) If the victim of the offense is a judge, magistrate, 882
prosecutor, peace officer, or ~~an~~ investigator of the bureau of 883
criminal identification and investigation and if the victim 884
suffered serious physical harm as a result of the commission of 885
the offense, ~~assault~~ a violation of division (B) of this section 886
is a felony of the fourth degree, and the court, pursuant to 887
division (F) of section 2929.13 of the Revised Code, shall impose 888
as a mandatory prison term one of the prison terms prescribed for 889
a felony of the fourth degree that is at least twelve months in 890

duration. 891

(5) If the victim of the offense is an officer or employee of 892
a public children services agency or a private child placing 893
agency and the offense relates to the officer's or employee's 894
performance or anticipated performance of official 895
responsibilities or duties, assault is either a felony of the 896
fifth degree or, if the offender previously has been convicted of 897
or pleaded guilty to an offense of violence, the victim of that 898
prior offense was an officer or employee of a public children 899
services agency or private child placing agency, and that prior 900
offense related to the officer's or employee's performance or 901
anticipated performance of official responsibilities or duties, a 902
felony of the fourth degree. 903

(6) If an offender who is convicted of or pleads guilty to 904
assault when it is a misdemeanor also is convicted of or pleads 905
guilty to a specification as described in section 2941.1423 of the 906
Revised Code that was included in the indictment, count in the 907
indictment, or information charging the offense, the court shall 908
sentence the offender to a mandatory jail term as provided in 909
division (G) of section 2929.24 of the Revised Code. 910

If an offender who is convicted of or pleads guilty to 911
assault when it is a felony also is convicted of or pleads guilty 912
to a specification as described in section 2941.1423 of the 913
Revised Code that was included in the indictment, count in the 914
indictment, or information charging the offense, except as 915
otherwise provided in division (C)(4) of this section, the court 916
shall sentence the offender to a mandatory prison term as provided 917
in division (D)(8) of section 2929.14 of the Revised Code. 918

(D) As used in this section: 919

(1) "Peace officer" has the same meaning as in section 920
2935.01 of the Revised Code. 921

(2) "Firefighter" has the same meaning as in section 3937.41 922
of the Revised Code. 923

(3) "Emergency medical service" has the same meaning as in 924
section 4765.01 of the Revised Code. 925

(4) "Local correctional facility" means a county, 926
multicounty, municipal, municipal-county, or multicounty-municipal 927
jail or workhouse, a minimum security jail established under 928
section 341.23 or 753.21 of the Revised Code, or another county, 929
multicounty, municipal, municipal-county, or multicounty-municipal 930
facility used for the custody of persons arrested for any crime or 931
delinquent act, persons charged with or convicted of any crime, or 932
persons alleged to be or adjudicated a delinquent child. 933

(5) "Employee of a local correctional facility" means a 934
person who is an employee of the political subdivision or of one 935
or more of the affiliated political subdivisions that operates the 936
local correctional facility and who operates or assists in the 937
operation of the facility. 938

(6) "School teacher or administrator" means either of the 939
following: 940

(a) A person who is employed in the public schools of the 941
state under a contract described in section 3319.08 of the Revised 942
Code in a position in which the person is required to have a 943
certificate issued pursuant to sections 3319.22 to 3319.311 of the 944
Revised Code. 945

(b) A person who is employed by a nonpublic school for which 946
the state board of education prescribes minimum standards under 947
section 3301.07 of the Revised Code and who is certificated in 948
accordance with section 3301.071 of the Revised Code. 949

(7) "Community control sanction" has the same meaning as in 950
section 2929.01 of the Revised Code. 951

(8) "Escorted visit" means an escorted visit granted under section 2967.27 of the Revised Code. 952
953

(9) "Post-release control" and "transitional control" have the same meanings as in section 2967.01 of the Revised Code. 954
955

(10) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code. 956
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(11) "Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code. 959
960

(12) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code. 961
962

Sec. 2903.21. (A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. 963
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(B) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this division, aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is a judge, a magistrate, a prosecutor, or an officer or employee of a public children services agency or a private child placing agency and the offense relates to the judge's, magistrate's, prosecutor's, officer's, or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was a judge, a magistrate, a prosecutor, or an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the judge's, magistrate's, prosecutor's, officer's, or employee's 967
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performance or anticipated performance of official 982
responsibilities or duties, a felony of the fourth degree. 983

(C) As used in this section: 984

(1) "Judge" and "magistrate" have the same meanings as in 985
section 2903.01 of the Revised Code. 986

(2) "Prosecutor" has the same meaning as in section 2935.01 987
of the Revised Code. 988

Sec. 2903.23. (A) As used in this section: 989

(1) "Immediate family" includes a person's spouse, brothers 990
and sisters of the whole or half blood, children, including 991
adopted children and stepchildren, parents, and grandparents. 992

(2) "Judge" and "magistrate" have the same meanings as in 993
section 2903.01 of the Revised Code. 994

(3) "Prosecutor" has the same meaning as in section 2935.01 995
of the Revised Code. 996

(B) No person, with intent to influence or interfere with a 997
judge, magistrate, or prosecutor in the performance of the 998
judge's, magistrate's, or prosecutor's official duties or to 999
retaliate against a judge, magistrate, or prosecutor for any 1000
decision made or action taken in the performance of the judge's, 1001
magistrate's, or prosecutor's official duties, shall knowingly 1002
threaten a judge, magistrate, or prosecutor with physical harm to 1003
the person or property of the judge, magistrate, or prosecutor, 1004
the judge's, magistrate's, or prosecutor's unborn, or a member of 1005
the judge's, magistrate's, or prosecutor's immediate family. 1006

(C) Whoever violates division (B) of this section is guilty 1007
of threatening a judge, magistrate, or prosecutor, a felony of the 1008
fifth degree. 1009

Sec. 2929.04. (A) Imposition of the death penalty for 1010

aggravated murder is precluded unless one or more of the following 1011
is specified in the indictment or count in the indictment pursuant 1012
to section 2941.14 of the Revised Code and proved beyond a 1013
reasonable doubt: 1014

(1) The offense was the assassination of the president of the 1015
United States or a person in line of succession to the presidency, 1016
the governor or lieutenant governor of this state, the 1017
president-elect or vice president-elect of the United States, the 1018
governor-elect or lieutenant governor-elect of this state, or a 1019
candidate for any of the offices described in this division. For 1020
purposes of this division, a person is a candidate if the person 1021
has been nominated for election according to law, if the person 1022
has filed a petition or petitions according to law to have the 1023
person's name placed on the ballot in a primary or general 1024
election, or if the person campaigns as a write-in candidate in a 1025
primary or general election. 1026

(2) The offense was committed for hire. 1027

(3) The offense was committed for the purpose of escaping 1028
detection, apprehension, trial, or punishment for another offense 1029
committed by the offender. 1030

(4) The offense was committed while the offender was under 1031
detention or while the offender was at large after having broken 1032
detention. As used in division (A)(4) of this section, "detention" 1033
has the same meaning as in section 2921.01 of the Revised Code, 1034
except that detention does not include hospitalization, 1035
institutionalization, or confinement in a mental health facility 1036
or mental retardation and developmentally disabled facility unless 1037
at the time of the commission of the offense either of the 1038
following circumstances apply: 1039

(a) The offender was in the facility as a result of being 1040
charged with a violation of a section of the Revised Code. 1041

(b) The offender was under detention as a result of being 1042
convicted of or pleading guilty to a violation of a section of the 1043
Revised Code. 1044

(5) Prior to the offense at bar, the offender was convicted 1045
of an offense an essential element of which was the purposeful 1046
killing of or attempt to kill another, or the offense at bar was 1047
part of a course of conduct involving the purposeful killing of or 1048
attempt to kill two or more persons by the offender. 1049

(6) The victim of the offense was a law enforcement officer, 1050
as defined in section 2911.01 of the Revised Code, a judge or 1051
magistrate, as defined in section 2903.01 of the Revised Code, or 1052
a prosecutor, as defined in section 2935.01 of the Revised Code, 1053
whom the offender had reasonable cause to know or knew to be a law 1054
enforcement officer, judge, magistrate, or prosecutor as so 1055
defined, and either the victim, at the time of the commission of 1056
the offense, was engaged in the victim's duties, or it was the 1057
offender's specific purpose to kill a law enforcement officer, 1058
judge, magistrate, or prosecutor as so defined. 1059

(7) The offense was committed while the offender was 1060
committing, attempting to commit, or fleeing immediately after 1061
committing or attempting to commit kidnapping, rape, aggravated 1062
arson, aggravated robbery, or aggravated burglary, and either the 1063
offender was the principal offender in the commission of the 1064
aggravated murder or, if not the principal offender, committed the 1065
aggravated murder with prior calculation and design. 1066

(8) The victim of the aggravated murder was a witness to an 1067
offense who was purposely killed to prevent the victim's testimony 1068
in any criminal proceeding and the aggravated murder was not 1069
committed during the commission, attempted commission, or flight 1070
immediately after the commission or attempted commission of the 1071
offense to which the victim was a witness, or the victim of the 1072
aggravated murder was a witness to an offense and was purposely 1073

killed in retaliation for the victim's testimony in any criminal proceeding. 1074
1075

(9) The offender, in the commission of the offense, 1076
purposefully caused the death of another who was under thirteen 1077
years of age at the time of the commission of the offense, and 1078
either the offender was the principal offender in the commission 1079
of the offense or, if not the principal offender, committed the 1080
offense with prior calculation and design. 1081

(10) The offense was committed while the offender was 1082
committing, attempting to commit, or fleeing immediately after 1083
committing or attempting to commit terrorism. 1084

(B) If one or more of the aggravating circumstances listed in 1085
division (A) of this section is specified in the indictment or 1086
count in the indictment and proved beyond a reasonable doubt, and 1087
if the offender did not raise the matter of age pursuant to 1088
section 2929.023 of the Revised Code or if the offender, after 1089
raising the matter of age, was found at trial to have been 1090
eighteen years of age or older at the time of the commission of 1091
the offense, the court, trial jury, or panel of three judges shall 1092
consider, and weigh against the aggravating circumstances proved 1093
beyond a reasonable doubt, the nature and circumstances of the 1094
offense, the history, character, and background of the offender, 1095
and all of the following factors: 1096

(1) Whether the victim of the offense induced or facilitated 1097
it; 1098

(2) Whether it is unlikely that the offense would have been 1099
committed, but for the fact that the offender was under duress, 1100
coercion, or strong provocation; 1101

(3) Whether, at the time of committing the offense, the 1102
offender, because of a mental disease or defect, lacked 1103
substantial capacity to appreciate the criminality of the 1104

offender's conduct or to conform the offender's conduct to the requirements of the law;	1105 1106
(4) The youth of the offender;	1107
(5) The offender's lack of a significant history of prior criminal convictions and delinquency adjudications;	1108 1109
(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;	1110 1111 1112 1113
(7) Any other factors that are relevant to the issue of whether the offender should be sentenced to death.	1114 1115
(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.	1116 1117 1118 1119
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.	1120 1121 1122 1123 1124 1125 1126
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.	1127 1128 1129