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Bill Analysis
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Sens. Austria, Carey, Clancy, Gardner, Goodman, Grendell, Harris, Padgett, Schaffer

BILL SUMMARY

- Expands the offense of "aggravated murder" to additionally prohibit a person from purposely causing the death of a judge or magistrate whom the offender knows or has reasonable cause to know is a judge or magistrate when either the victim, at the time of the commission of the offense, is engaged in the victim's duties, or it is the offender's specific purpose to kill a judge or magistrate.
- Expands one of the aggravating circumstances used in sentencing persons convicted of aggravated murder to include that the victim of the offense was a judge or magistrate whom the offender had reasonable cause to know or knew to be a judge or magistrate, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a judge or magistrate.
- Modifies the penalty for the offense of "felonious assault" so that: (1) it is a felony of the first degree if the offense involves serious physical harm or the use of a deadly weapon or dangerous ordnance and the victim is a judge or magistrate, and (2) it is a felony of the first degree, and the court must impose a mandatory prison term if the victim is a judge or magistrate and the victim suffered serious physical harm as a result of the offense.
- Modifies the penalty for the offense of "aggravated assault" so that: (1) it is a felony of the third degree if the victim is a judge or magistrate, and (2) it is a felony of the third degree, and the court must impose a mandatory prison term if the victim is a judge or magistrate, and the victim suffered serious physical harm as a result of the commission of the offense.

- Modifies the penalty for the offense of "assault" so that: (1) it is a felony of the fourth degree if the victim of the offense is a judge or magistrate, while in the performance of the judge's or magistrate's official duties, and (2) it is a felony of the fourth degree, and the court must impose a mandatory prison term if the victim is a judge or magistrate, and the victim suffered serious physical harm as a result of the commission of the offense.
- Modifies the penalty for the offense of "aggravated menacing" so that: (1) if the victim is a judge or magistrate, and the offense relates to the judge's or magistrate's performance or anticipated performance of official responsibilities or duties, it 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 or magistrate or an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the judge's, magistrate's, officer's, or employee's performance or anticipated performance of official responsibilities or duties, it is a felony of the fourth degree, and (2) if the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties and the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was a judge or magistrate, and that prior offense related to the judge's or magistrate's performance or anticipated performance of official responsibilities or duties, it is a felony of the fourth degree.
- Prohibits a person, with intent to influence or interfere with a judge or magistrate in the performance of the judge's or magistrate's official duties or to retaliate against a judge or magistrate for any decision made or action taken in the performance of the judge's or magistrate's official duties, from knowingly threatening a judge or magistrate with physical harm to the person or property of the judge or magistrate, the judge's or magistrate's unborn, or a member of the judge's or magistrate's immediate family, and specifies that a violation of this prohibition is the offense of "threatening a judge or magistrate," a felony of the fifth degree.

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CONTENT AND OPERATION

Aggravated murder

Prohibition and general penalty

Existing law. Existing law prohibits a person from doing any of the following: (1) purposely, and with prior calculation and design, causing the death of another or the unlawful termination of another's pregnancy, (2) purposely causing 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, the offense of kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape, (3) purposely causing the death of another who is under 13 at the time of the commission of the offense, (4) if the person is under detention as a result of having been found guilty of or having pleaded guilty to a felony or breaks that detention, purposely causing the death of another, or (5) purposely causing the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either the victim, at the time of the commission of the offense, is engaged in the victim's duties, or it is the offender's specific purpose to kill a law enforcement officer. A violation of any of these prohibitions is the offense of "aggravated murder," and the offender must be

sentenced to death or be imprisoned for life in accordance with R.C. 2929.022, 2929.03, and 2929.04 (see "Aggravated murder sentencing mechanism," below) and, in addition, may be fined not more than \$25,000. (R.C. 2903.01, and R.C. 2929.02, not in the bill.)

Operation of the bill. The bill expands the prohibition described in clause (5) of the preceding paragraph so that it also prohibits a person from purposely causing the death of a *judge or magistrate* (see "Definitions of 'judge' and 'magistrate'," below) whom the offender knows or has reasonable cause to know is a *judge or magistrate* when either the victim, at the time of the commission of the offense, is engaged in the victim's duties, or it is the offender's specific purpose to kill a *judge or magistrate* (the italicized language is added by the bill). A violation of the expanded prohibition remains the offense of "aggravated murder." (R.C. 2903.01(E) to (G).)

The existing penalty for aggravated murder applies to a violation of the expanded prohibition (R.C. 2903.01(F), and R.C. 2929.02, not in the bill).

Aggravated murder sentencing mechanism

Existing law. Under existing law, an offender who is convicted of or pleads guilty to aggravated murder is sentenced to death or is imprisoned for life under a special sentencing mechanism set forth in R.C. 2929.022 to 2929.06. The offender is not subject to the potential imposition of a sentence of death unless, in addition to the aggravated murder, the offender also is convicted of or pleads guilty to one or more specifications of an aggravating circumstance set forth in existing law. If an offender is convicted of or pleads guilty to aggravated murder and one or more specifications of an aggravating circumstance and is tried before a jury, the jury conducts a sentencing hearing in which it balances the aggravating circumstances of which the offender was convicted or to which the offender pleaded guilty against any mitigating factors present (see **COMMENT 1** for the mitigating factors). If the jury makes specified findings, it must recommend a sentence of death to the trial court; if it does not make those findings, it must recommend a life sentence (the law provides for different types of life sentences). If the jury recommends a life sentence, the trial court must impose a life sentence. If the jury recommends a sentence of death, the trial court also must conduct the balancing test and, if it makes the specified findings, it must impose a sentence of death; if it does not make those findings, it must impose a life sentence (the law provides for different types of life sentences). If the offender was tried without a jury, the three-judge panel that tried the offender conducts a sentencing hearing in which it balances the aggravating circumstances of which the offender was convicted or to which the offender pleaded guilty against any mitigating circumstances present. If the three-judge panel makes the specified findings, it

must impose a sentence of death; if it does not make those findings, it must impose a life sentence (the law provides for different types of life sentences).

Under existing law, imposition of the death penalty for aggravated murder is precluded unless one or more of the following aggravating circumstances is specified in the indictment or count in the indictment and proved beyond a reasonable doubt (R.C. 2929.04(A)):

(1) The offense was the assassination of the U.S. President or a person in line of succession to the Presidency, the Ohio Governor or Lieutenant Governor, the U.S. President-elect or Vice President-elect, the Ohio Governor-elect or Lieutenant Governor-elect, or a candidate for any of the offices described in this paragraph (for purposes of this provision, a person is a candidate if the person has been nominated for election according to law, has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or 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.

(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 R.C. 2911.01) whom the offender had reasonable cause to know or knew to be such a law enforcement officer, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill such a law enforcement officer.

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

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

(9) The offender, in the commission of the offense, purposefully caused the death of another who was under 13 at the time of the commission of the offense, and either the offender was the principal offender in the commission of the offense or, if not the principal offender, committed the offense with prior calculation and design.

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

Operation of the bill. The bill expands the aggravating circumstance described above in paragraph (6) under "**Existing law**" so that it also applies when the victim of the aggravated murder was a judge or magistrate whom the offender had reasonable cause to know or knew to be a *judge or magistrate*, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a *judge or magistrate* (the italicized language is added by the bill). (R.C. 2929.04(A)(6).)

Felonious assault

Existing law

Existing law prohibits a person from doing any of the following: (1) knowingly causing serious physical harm to another or to another's unborn, (2) knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, or (3) with knowledge that the person has tested positive as a carrier of a virus that causes AIDS, knowingly doing any of the following: (a) engaging in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct, (b) engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes AIDS, or (c) engaging in sexual conduct with a person under 18 who is not the spouse of the offender.

A violation of any of these prohibitions if the offense of "felonious assault." Except as otherwise described in this paragraph, felonious assault is a felony of the second degree. If the felonious assault is committed in violation of the prohibition described in clause (1) or (2) of the preceding paragraph and the victim is a peace officer (as defined in R.C. 2935.01, which is not in the bill) or an investigator of the Bureau of Criminal Identification and Investigation (as defined in R.C. 2903.11(E)(5); hereafter, a BCII investigator), felonious assault is a felony of the first degree, and, if the victim suffered serious physical harm as a result of the commission of the offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. (R.C. 2903.11.)

Operation of the bill

The bill modifies the penalty for the offense of felonious assault so that the increased penalties currently provided for a violation of the prohibition described above in clause (1) or (2) of the first paragraph under "**Existing law**" also apply when the victim of the offense is a judge or magistrate. Specifically, under the bill, if the felonious assault is committed in violation of either of those prohibitions and the victim is a *judge or magistrate*, felonious assault is a felony of the first degree, and, if the victim suffered serious physical harm as a result of the commission of the offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree. (R.C. 2903.11(D).)

Aggravated assault

Existing law

Existing law prohibits a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly causing serious physical harm to another or to another's unborn or knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

A violation of the prohibition is the offense of "aggravated assault." Except as otherwise described in this paragraph, "aggravated assault" is a felony of the fourth degree. If the victim of the offense is a peace officer (as defined in R.C. 2935.01, which is not in the bill) or a BCII investigator, aggravated assault is a felony of the third degree, and, if the victim suffered serious physical harm as a result of the commission of the offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. (R.C. 2903.12.)

Operation of the bill

The bill modifies the penalty for the offense of aggravated assault so that the increased penalties currently provided also apply when the victim of the offense is a judge or magistrate. Specifically, under the bill, if the victim of the offense is a *judge or magistrate*, aggravated assault is a felony of the third degree, and, if the victim suffered serious physical harm as a result of the commission of the offense, the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. (R.C. 2903.12(B).)

Assault

Existing law

Existing law prohibits a person from knowingly causing or attempting to cause physical harm to another or to another's unborn, or recklessly causing serious physical harm to another or to another's unborn (R.C. 2903.13(A) and (B)). A violation of the prohibition is the offense of "assault" and is punished as follows (R.C. 2903.13(C)):

(1) Except as otherwise described below in paragraphs (2) to (6), assault is a misdemeanor of the first degree.

(2) Except as otherwise described in this paragraph, if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a felony of the fourth degree. If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, if the offender previously has been convicted of or pleaded guilty to assault, felonious assault, knowingly failing to provide for a functionally impaired person, or recklessly failing to provide for a functionally impaired person, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, assault is a felony of the third degree.

(3) If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree: (a) it occurs in or on the grounds of a state correctional institution, a Department of Youth Services institution, or a local correctional facility, the victim is an employee of the state department operating the facility, the local correctional facility, or a probation department or is on the premises for business purposes or as a visitor, and the offense is committed by a person confined in the institution or facility in specified circumstances, or, in relation to a person in a state institution, by a parolee, an offender under transitional control, a community control sanction, or an escorted visit, a person under post-release control, or an offender under any other type of supervision by a

government agency, (b) it occurs off the grounds of an institution or facility of a type described in clause (a) of this paragraph, the victim is an employee of the state department operating the facility, the local correctional facility, or a probation department, the offense occurs during the employee's official work hours while the employee is engaged in official work responsibilities, and the offense is committed by a person confined in the institution or facility in specified circumstances who temporarily is outside of the institution for any purpose, or, in relation to a person in a state institution, by a parolee, an offender under transitional control, a community control sanction, or an escorted visit, a person under post-release control, or an offender under any other type of supervision by a government agency, or (c) the victim is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position.

(4) If the victim of the offense is a peace officer (as defined in R.C. 2935.01, which is not in the bill), BCII investigator, firefighter, or person performing emergency medical service, while in the performance of their official duties, assault is a felony of the fourth degree.

(5) If the victim of the offense is a peace officer or BCII investigator and if the victim suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration.

(6) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, assault is either 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 an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

Operation of the bill

The bill modifies the penalty provisions for the offense of assault that are described above in paragraphs (4) and (5) under "**Existing law**" so that the increased penalties currently provided under those provisions also apply when the victim of the offense is a judge or magistrate. Specifically, under the bill, if the victim of the offense is a *judge or magistrate*, while in the performance of their

official duties, assault is a felony of the fourth degree, and, if the victim of the offense is a *judge or magistrate* and the victim suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration. (R.C. 2903.13(C).)

Aggravated menacing

Existing law

Existing law prohibits a person from knowingly causing 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. A violation of this prohibition is the offense of "aggravated menacing." Except as otherwise described in this paragraph, aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the 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 an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree. (R.C. 2903.21.)

Operation of the bill

The bill modifies the penalty for the offense of aggravated menacing so that the increased penalties currently provided also apply when the victim of the offense is a judge or magistrate. Specifically, under the bill, if the victim of the offense is a *judge or magistrate* and the offense relates to the *judge's or magistrate'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 or magistrate or* an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the *judge's, magistrate's, officer's, or employee's* performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree. (R.C. 2903.21(A) and (B).)

Threatening a judge or magistrate

The bill enacts a new prohibition that prohibits a person, with intent to influence or interfere with a judge or magistrate in the performance of the judge's or magistrate's official duties or to retaliate against a judge or magistrate for any decision made or action taken in the performance of the judge's or magistrate's official duties, from knowingly threatening a judge or magistrate with physical harm to the person or property of the judge or magistrate, the judge's or magistrate's unborn, or a member of the judge's or magistrate's immediate family. A violation of this prohibition is the offense of "threatening a judge or magistrate," a felony of the fifth degree. (See **COMMENT 2**.)

The bill specifies that, as used in these provisions, "immediate family" includes a person's spouse, brothers and sisters of the whole or half blood, children, including adopted children and stepchildren, parents, and grandparents (R.C. 2903.23).

Definitions of "judge" and "magistrate"

As used in all of the bill's provisions described above (R.C. 2903.01(G)(3) and (4), 2903.11(E)(7), 2903.12(C)(3), 2903.13(D)(11), 2903.21(C), 2903.23(A)(2), and 2929.04(A)(6)):

"Judge" means a judge of a court created under the Ohio Constitution or Ohio statutes or of a United States court located in Ohio.

"Magistrate" means a magistrate of a court created under the Ohio constitution or Ohio statutes or of a United States court located in Ohio.

COMMENT

1. Existing law provides that, in conducting the balancing test used in determining whether to sentence an offender to death, if one or more of the aggravating circumstances listed in R.C. 2929.04 is proved beyond a reasonable doubt, the court, trial jury, or panel of three judges must consider, and weigh against the aggravating circumstances proved beyond a reasonable doubt, the nature and circumstances of the offense, the history, character, and background of the offender, and all of the following factors: (a) whether the victim of the offense induced or facilitated it, (b) whether it is unlikely that the offense would have been committed, but for the fact that the offender was under duress, coercion, or strong provocation, (c) whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of the law, (d) the youth of the offender, (e) the offender's lack of a

significant history of prior criminal convictions and delinquency adjudications, (f) 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, and (g) any other factors that are relevant to the issue of whether the offender should be sentenced to death.

The defendant must be given great latitude in the presentation of evidence of the factors listed in the preceding paragraph and of any other factors in mitigation of the imposition of the sentence of death. The existence of any of the mitigating factors listed in the preceding paragraph does not preclude the imposition of a sentence of death on the offender but must be weighed by the trial court, trial jury, or the panel of three judges against the aggravating circumstances the offender was found guilty of committing. (R.C. 2929.04(B) and (C).)

2. Existing law sets forth an offense that relates to an attempt to intimidate a public official in the performance of the official's duties and another that relates to retaliation against a public official for acts undertaken in the performance of those duties. The existing offenses provide as follows:

(a) ***Intimidation***. Existing R.C. 2921.03, not in the bill, prohibits a person, knowingly and by force, by unlawful threat of harm to any person or property, or by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, from attempting to influence, intimidate, or hinder a "public servant," "party official," or witness in the discharge of the person's duty. A violation of the prohibition is the offense of "intimidation," a felony of the third degree.

As used in R.C. 2921.03, "public servant" means any of the following: (i) any "public official" ("public official" means any elected or appointed officer, employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers), (ii) any person performing *ad hoc* a governmental function, including, but not limited to, a juror, member of a temporary commission, master, arbitrator, advisor, or consultant, or (iii) any person who is a candidate for public office, whether or not the person is elected or appointed to the office for which the person is a candidate (a person is a candidate for purposes of this clause if the person has been nominated according to law for election or appointment to public office, or if the person has filed a petition or petitions as required by law to have the person's name placed on the ballot in a primary, general, or special election, or if the person campaigns as a write-in candidate in any primary, general, or special election). Also, "party official" means any person who holds an elective or appointive post in a political party in the United States or Ohio, by virtue of which the person directs, conducts, or

participates in directing or conducting party affairs at any level of responsibility. (R.C. 2921.01, not in the bill.)

(b) ***Retaliation***. Existing R.C. 2921.05 prohibits a person, purposely and by force or by unlawful threat of harm to any person or property, from doing either of the following: (i) retaliating against a "public servant," a "party official," or an attorney or witness who was involved in a civil or criminal action or proceeding because the public servant, party official, attorney, or witness discharged the duties of the public servant, party official, attorney, or witness, or (ii) retaliating against the victim of a crime because the victim filed or prosecuted criminal charges. A violation of either prohibition is the offense of "retaliation," a felony of the third degree.

As used in this provision, "public servant" and "party official" have the same meanings as described above in **COMMENT 2(a)**.

HISTORY

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Introduced	03-06-07

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