



Ohio Legislative Service Commission

Bill Analysis

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Reps. Zehringer, R. Adams, Derickson, Hite, Huffman, Bacon, Stebelton, Combs, Stautberg, McGregor, Jordan, Daniels, Balderson, Blair

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 death 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 law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is such a person and (2) it is a felony of the first degree, and the court must impose a mandatory prison term if the victim is a law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is such a person 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 law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is such a

person and (2) it is a felony of the third degree, and the court must impose a mandatory prison term if the victim is a law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is such a person 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 law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is such a person, or a firefighter or a person performing emergency medical service, while in the performance of 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 law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is such a person 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 the existing increased penalty that applies when the victim of the offense is an officer or an employee of a public children services agency or a private child placing agency applies only when the offender knows or has reasonable cause to know that the victim is or was an officer or an employee of a public children services agency or a private child placing agency.
- Makes assault a felony of the fifth degree if it is committed on courthouse grounds or premises where a courtroom is located by a person who is in or on those grounds or premises by reason of or in relation to an action or proceeding that is occurring, has occurred, or is scheduled to occur at the courthouse or courtroom and the offense occurs during the action or proceeding or while the parties to the action or proceeding or the officials involved in conducting the action or proceeding are on their way to or from the action or proceeding.
- Modifies the penalty for the offense of aggravated menacing so that, if the victim is a law enforcement officer, judge, magistrate, or officer or employee of a public children services agency or private child placement agency whom the offender knows or has reasonable cause to know is such a person and the offense relates to the victim'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 law enforcement officer, judge, magistrate, or officer or employee of a public children services agency or private child placing agency whom the offender knew or had reasonable cause to know was such a person, and that prior offense

related to the victim's performance or anticipated performance of official responsibilities or duties, it is a felony of the fourth degree.

- Expands the offense of intimidation, a felony of the third degree, to also prohibit a person, knowingly and by an unlawful threat of harm to the unborn of a public servant, a party official, or an attorney or witness in a civil action or proceeding, from attempting to influence, intimidate, or hinder the discharge of that person's duties.
- Modifies the offense of retaliation to prohibit a person, because a public servant, a party official, or an attorney or witness in a civil or criminal action or proceeding discharged that person's duties, from knowingly (1) using force against or making an unlawful threat of harm to any person or property or the unborn of the public servant, a party official, attorney, or witness or (2) using force against or making an unlawful threat of harm to any person or property because a crime victim filed or prosecuted criminal charges.

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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: purposely causing the death of another or the unlawful termination of another's pregnancy with prior calculation and design or while committing, attempting to commit, or fleeing immediately after committing or attempting to commit kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, terrorism, or escape; purposely causing the death of another who is under 13 at the time of the commission of the offense; purposely causing the death of another while under detention for a felony conviction or while breaking that detention; or 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 offense of aggravated murder to also prohibit a person from purposely causing the death of a *judge or magistrate* (see "**Definitions**," 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*. A violation of the new prohibition is the offense of "aggravated murder." (R.C. 2903.01(E) to (G).)

The existing penalty for aggravated murder applies to a violation of the new 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 law provides for

different types of life sentences). 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. 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. 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 those offices, (2) the offense was committed for hire, for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender, or while the offender was under detention or at large after having broken detention, (3) prior to the offense at bar, the offender was convicted of 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, (4) the victim was a law enforcement officer whom the offender had reasonable cause to know or knew to be 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 a law enforcement officer, (5) 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, or 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 aggravated murder or, if not the principal offender, committed the aggravated murder with prior calculation and design, (6) the victim 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 was a witness to an offense and was purposely killed in retaliation for the victim's testimony in any criminal proceeding, and 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 (4) 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* (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 is 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 of the offense is a peace officer (see "**Definitions**," below) 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. The bill also changes "peace officer" to "law enforcement officer" (see "**Definitions**," below) and adds that the offender must have known or had reason to know of the victim's status for the higher penalty to apply. Thus, under the bill, if the victim of felonious assault is a *law enforcement officer, judge, magistrate, or BCII investigator, whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, or investigator of the bureau of criminal identification and investigation*, 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)(1).)

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 (R.C. 2903.12(A)).

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 (see "**Definitions**," below) 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(B).)

Operation of the bill

The bill changes "peace officer" to "law enforcement officer" (see "**Definitions**," below) and modifies the penalty for the offense of aggravated assault so that when the victim of the offense is a *law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, or BCII investigator*, the offense is a felony of the third degree, and if the victim suffers serious physical harm as a result of the offense the court must impose a mandatory prison term as under existing law. (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 a misdemeanor of the first degree except as provided below (R.C. 2903.13(C)).

(1) If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is either a felony of the fourth degree or, 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 in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, a felony of the third degree (R.C. 2903.13(C)(1)).

(2) 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. (R.C. 2903.13(C)(2).)

(3) If the victim of the offense is a peace officer (see "**Definitions**," below), 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 (R.C. 2903.13(C)(3)).

(4) If the victim of the offense is a peace officer (see "**Definitions**," below) 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 (R.C. 2903.13(C)(4)).

(5) 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. (R.C. 2903.13(C)(5).)

Operation of the bill

The bill changes "peace officer" to "law enforcement officer" (see "**Definitions**," below) and modifies the penalty provisions for the offense of assault that are described above in paragraphs (3) and (4) under "**Existing law**" so that the increased penalties currently provided under those provisions apply when the victim of the offense is a law enforcement officer, judge, or magistrate. Specifically, under the bill, if the victim of the offense is a *law enforcement officer, judge, magistrate, or BCII investigator performing official duties whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, or BCII investigator*, or a firefighter or person performing emergency medical service performing official duties, assault is a felony of the fourth

degree. If the victim of the offense is a *law enforcement officer, judge, magistrate, or BCII investigator whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, 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. (R.C. 2903.13(C)(3) and (4).)

The bill modifies the penalty provisions for the offense of assault that are described above in paragraph (5) under "**Existing law**" so that the increased penalties currently provided under those provisions apply only when the *offender knows or has reasonable cause to know the victim is an officer or employee of a public children services agency or a private child placing agency*. The bill does not otherwise change those provisions. (R.C. 2903.13(C)(5).)

The bill also provides that assault is a felony of the fifth degree if all of the following apply: (1) the offense occurs in or on the grounds of a courthouse or on premises where a courtroom is located, (2) the offense is committed by a person who is in or on those grounds or on those premises by reason of or in relation to an action or proceeding that is occurring, has occurred, or is scheduled to occur at the courthouse or courtroom, and (3) the offense occurs during the action or proceeding or while the parties to the action or proceeding or the officials involved in conducting the action or proceeding are on their way to or are departing after the action or proceeding (R.C. 2903.13(C)(2)(f)).

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 provided under existing law also apply when the victim of the offense is a law enforcement officer, judge, or magistrate but do not apply unless the offender knows or has reason to know of the victim's status. Specifically, under the bill, if the victim of the offense is a *law enforcement officer, judge, magistrate, or officer or employee of a public children services agency or a private child placing agency whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, or officer or employee of a public children services agency or private child placing agency* and the offense relates to the victim'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 *law enforcement officer, judge, or magistrate or an officer or employee of a public children services agency or private child placing agency whom the offender knew or had reasonable cause to know was a law enforcement officer, judge, magistrate, or officer or employee of a public children services agency or private child placing agency*, and that prior offense related to the *law enforcement officer's, 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).)

Intimidation

Existing law

Existing law 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 an attorney or witness involved in a civil action or proceeding in the discharge of the person's duty. (For definitions of "public servant" and "party official," see **COMMENT 2**.) A violation of the prohibition is the offense of "intimidation," a felony of the third degree. (R.C. 2921.03.)

Operation of the bill

The bill adds *by unlawful threat of harm to an unborn of the public servant, party official, attorney, or witness involved in the action or proceeding* to the methods by which intimidation may be committed. It defines "unlawful threat" to include *a threat that is made directly or indirectly*. (R.C. 2921.03(A) and (C).)

Retaliation

Existing law

Existing law prohibits a person, purposely and by force or by unlawful threat of harm to any person or property, from doing either of the following: (1) 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 (2) 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. (R.C. 2921.05.)

Operation of the bill

The bill eliminates the formulation "purposely and by force or unlawful threat of harm" from the offense of retaliation. It instead (1) prohibits any person, because a public servant, a party official, or an attorney or witness who was involved in a civil or criminal action or proceeding discharged his or her duties, from *knowingly using force against or making an unlawful threat of harm to any person or property or use force against or make an unlawful threat to harm an unborn of the public servant, party official, attorney, or witness* and (2) prohibits any person from *knowingly using force against or making an unlawful threat of harm to any person or property because a crime victim filed or prosecuted criminal charges*. The bill defines "unlawful threat" to include *a threat that is made directly or indirectly*. (R.C. 2921.05.)

Definitions

Judge and magistrate

For purposes of the bill, "judge" means a judge of, and "magistrate" means a magistrate of, a court created under the constitution or statutes of Ohio or of a United States court located in Ohio (R.C. 2903.01(G)(3) and (4), 2903.11(E)(6), 2903.12(E)(2), 2903.13(D)(10), 2903.21(C), and 2929.04(A)(6)).

Peace officer and law enforcement officer

Under existing law, for purposes of the felonious assault, aggravated assault, and assault statutes, "peace officer" has the same meaning as in R.C. 2935.01. That definition includes a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized municipal police department; metropolitan housing authority police officer; regional transit authority police officer; state university law enforcement officer; Department of Public Safety enforcement agent; Department of Taxation employee with investigation powers under R.C. 5743.45; Department of Natural Resources natural resources law

enforcement staff officer, a forest officer, preserve officer, wildlife officer, park officer, or state watercraft officer; individual designated to perform law enforcement duties under R.C. 511.232, 1545.13, or 6101.75; veterans' home police officer; port authority special police officer; township police constable; township or joint township police district police officer; a special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility; the House of Representatives sergeant at arms if the sergeant at arms has arrest authority; an assistant House sergeant at arms; BCII officer or employee with a certificate attesting to satisfactory completion of an approved peace officer basic training program who is providing requested assistance to a law enforcement officer or emergency assistance to a peace officer pursuant to R.C. 109.54 or 109.541; a state fire marshal law enforcement officer; and for limited purposes the superintendent and troopers of the State Highway Patrol. (R.C. 2903.11(E)(3), 2903.12(C)(2), and 2903.13(D)(1), and 2935.01(B), not in the bill.)

Where the bill replaces "peace officer" with "law enforcement officer" (R.C. 2903.11, 2903.12, and 2903.13) or adds "law enforcement officer" (R.C. 2903.21), by default it uses the definition given in R.C. 2901.01. That definition includes a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, metropolitan housing authority police officer and state highway patrol trooper; an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority; a mayor as chief conservator of the peace within the mayor's municipal corporation; a member of a county, township, or municipal auxiliary police force; a person lawfully called pursuant to R.C. 311.07 to aid a sheriff in keeping the peace; a special patrolling officer appointed by a mayor during a riot or emergency; a member of the organized militia of Ohio or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence; a prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor; a veterans' home police officer; a regional transit authority police officer; a port authority police officer; the House of Representatives sergeant at arms if the sergeant at arms has arrest authority pursuant to R.C. 101.311(E)(1) and an assistant House sergeant at arms; and a special police officer employed by a municipal corporation at a municipal airport or other municipal air navigation facility. (R.C. 2901.01(A)(11).)

Unborn of a public servant, party official, attorney, or witness

The bill, in R.C. 2921.01(J), defines "unborn of a public servant, party official, attorney, or witness" for purposes of R.C. 2921.03 (intimidation) and R.C. 2921.05

(retaliation) as a member of the species homo sapiens who is or was carried in the womb of a public servant, a party official, or an attorney or witness who was involved in a civil (in a case of retaliation, civil or criminal) action or proceeding, or who is or was the offspring of a public servant, a party official, or an attorney or witness who was involved in a civil (in a case of retaliation, civil or criminal) action or proceeding and is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs. The bill further provides that, notwithstanding this definition, "unborn of a public servant, party official, attorney, or witness" is not to be applied or construed in either of the following ways:

(1) In such a way that R.C. 2921.03 or 2921.05 generally prohibits a pregnant woman or her physician from performing an abortion with the actual consent of the pregnant woman, with the consent of the pregnant woman implied by law in a medical emergency, or with the approval of a person otherwise authorized by law to consent to medical treatment on behalf of the pregnant woman. An abortion that is performed without such consent or approval may be punished as a violation of R.C. 2921.03 or 2921.05, as applicable. An abortion that is performed with such consent or approval but that violates R.C. 2919.12 (unlawful abortion), 2919.13(B) (abortion manslaughter), 2919.151 (partial birth feticide), 2919.17 (terminating or attempting to terminate a human pregnancy after viability), or 2919.18 (failure to perform viability testing) may be punished under those sections.

(2) In such a way that R.C. 2921.03 or 2921.05 applies to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in her delivery of a stillborn baby; her causing, in any other manner, the death in utero of an unborn that she is carrying; her causing the death of her child who is born alive but who dies from one or more injuries that are sustained while the child is an unborn; her causing her child who is born alive to sustain one or more injuries while the child is an unborn; or her causing, threatening to cause, or attempting to cause, in any other manner, an injury, illness, or other physiological impairment, regardless of its duration or gravity, or a mental illness or condition, regardless of its duration or gravity, to an unborn that she is carrying.

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. As used in R.C. 2921.03 (intimidation), "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.)

HISTORY

ACTION

Introduced

DATE

03-18-09

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