

## As Introduced

**128th General Assembly  
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2009-2010**

**H. B. No. 89**

**Representative Zehringer**

**Cosponsors: Representatives Adams, R., Derickson, Hite, Huffman, Bacon,  
Stebelton, Combs, Stautberg, McGregor, Jordan, Daniels, Balderson, Blair**

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### **A B I L L**

To amend sections 2903.01, 2903.11, 2903.12, 2903.13, 1  
2903.21, 2921.01, 2921.03, 2921.05, and 2929.04 of 2  
the Revised Code to provide that the purposeful 3  
killing of a judge or magistrate in specified 4  
circumstances is aggravated murder; to increase 5  
the penalty for felonious assault, aggravated 6  
assault, and assault in specified circumstances 7  
when the victim is a judge, a magistrate, or a law 8  
enforcement officer, to change the circumstances 9  
in which the penalty for those offenses is 10  
increased when the victim is a BCII investigator, 11  
and to remove the increased penalty for those 12  
offenses when the victim is a peace officer; to 13  
increase the penalty for assault when the offense 14  
is committed in a courthouse in specified 15  
circumstances and to change the circumstances in 16  
which the penalty for that offense is increased 17  
when the victim is a children services worker; to 18  
increase the penalty for aggravated menacing in 19  
specified circumstances when the victim is a law 20  
enforcement officer, judge, or magistrate and to 21  
change the circumstances in which the penalty for 22

that offense is increased when the victim is a 23  
children services worker; to expand intimidation 24  
to also prohibit attempting to intimidate a public 25  
servant, party official, attorney, or witness by 26  
making an unlawful threat of harm to an unborn of 27  
that person; to expand retaliation to also 28  
prohibit using force against or making an unlawful 29  
threat to harm an unborn of a public servant, 30  
party official, attorney, or witness and to modify 31  
the culpable mental state for and other elements 32  
of that offense; and to make the killing of a 33  
judge or magistrate in specified circumstances an 34  
aggravating circumstance for the imposition of the 35  
death penalty for aggravated murder. 36  
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**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2903.01, 2903.11, 2903.12, 2903.13, 38  
2903.21, 2921.01, 2921.03, 2921.05, and 2929.04 of the Revised 39  
Code be amended to read as follows: 40

**Sec. 2903.01.** (A) No person shall purposely, and with prior 41  
calculation and design, cause the death of another or the unlawful 42  
termination of another's pregnancy. 43

(B) No person shall purposely cause the death of another or 44  
the unlawful termination of another's pregnancy while committing 45  
or attempting to commit, or while fleeing immediately after 46  
committing or attempting to commit, kidnapping, rape, aggravated 47  
arson, arson, aggravated robbery, robbery, aggravated burglary, 48  
burglary, terrorism, or escape. 49

(C) No person shall purposely cause the death of another who 50

is under thirteen years of age at the time of the commission of 51  
the offense. 52

(D) No person who is under detention as a result of having 53  
been found guilty of or having pleaded guilty to a felony or who 54  
breaks that detention shall purposely cause the death of another. 55

(E) No person shall purposely cause the death of a judge, 56  
magistrate, or law enforcement officer whom the offender knows or 57  
has reasonable cause to know is a judge, magistrate, or law 58  
enforcement officer when either of the following applies: 59

(1) The victim, at the time of the commission of the offense, 60  
is engaged in the victim's duties. 61

(2) It is the offender's specific purpose to kill a judge, 62  
magistrate, or law enforcement officer. 63

(F) Whoever violates this section is guilty of aggravated 64  
murder, and shall be punished as provided in section 2929.02 of 65  
the Revised Code. 66

(G) As used in this section: 67

(1) "Detention" has the same meaning as in section 2921.01 of 68  
the Revised Code. 69

(2) "Law enforcement officer" has the same meaning as in 70  
section 2911.01 of the Revised Code. 71

(3) "Judge" means a judge of a court created under the 72  
constitution or statutes of this state or of a United States court 73  
located in this state. 74

(4) "Magistrate" means a magistrate of a court created under 75  
the constitution or statutes of this state or of a United States 76  
court located in this state. 77

**Sec. 2903.11.** (A) No person shall knowingly do either of the 78  
following: 79

(1) Cause serious physical harm to another or to another's unborn;	80 81
(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.	82 83 84
(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:	85 86 87 88
(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;	89 90 91
(2) Engage 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 acquired immunodeficiency syndrome;	92 93 94 95 96
(3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.	97 98
(C) The prosecution of a person under this section does not preclude prosecution of that person under section 2907.02 of the Revised Code.	99 100 101
(D)(1)(a) Whoever violates this section is guilty of felonious assault. Except as otherwise provided in this division or division (D)(1)(b) of this section, felonious assault is a felony of the second degree. If the victim of a violation of division (A) of this section is a <del>peace</del> <u>law enforcement officer, judge, magistrate, or an investigator of the bureau of criminal identification and investigation whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, or investigator of the bureau of criminal</u>	102 103 104 105 106 107 108 109 110

identification and investigation, felonious assault is a felony of 111  
the first degree. 112

(b) Regardless of whether the felonious assault is a felony 113  
of the first or second degree under division (D)(1)(a) of this 114  
section, if the offender also is convicted of or pleads guilty to 115  
a specification as described in section 2941.1423 of the Revised 116  
Code that was included in the indictment, count in the indictment, 117  
or information charging the offense, except as otherwise provided 118  
in this division or unless a longer prison term is required under 119  
any other provision of law, the court shall sentence the offender 120  
to a mandatory prison term as provided in division (D)(8) of 121  
section 2929.14 of the Revised Code. If the victim of the offense 122  
is a ~~peace~~ law enforcement officer, judge, magistrate, or an 123  
investigator of the bureau of criminal identification and 124  
investigation whom the offender knows or has reasonable cause to 125  
know is a law enforcement officer, judge, magistrate, or 126  
investigator of the bureau of criminal identification and 127  
investigation, and if the victim suffered serious physical harm as 128  
a result of the commission of the offense, felonious assault is a 129  
felony of the first degree, and the court, pursuant to division 130  
(F) of section 2929.13 of the Revised Code, shall impose as a 131  
mandatory prison term one of the prison terms prescribed for a 132  
felony of the first degree. 133

(2) In addition to any other sanctions imposed pursuant to 134  
division (D)(1) of this section for felonious assault committed in 135  
violation of division (A)(2) of this section, if the deadly weapon 136  
used in the commission of the violation is a motor vehicle, the 137  
court shall impose upon the offender a class two suspension of the 138  
offender's driver's license, commercial driver's license, 139  
temporary instruction permit, probationary license, or nonresident 140  
operating privilege as specified in division (A)(2) of section 141  
4510.02 of the Revised Code. 142

(E) As used in this section:	143
(1) "Deadly weapon" and "dangerous ordnance" have the same meanings as in section 2923.11 of the Revised Code.	144 145
(2) "Motor vehicle" has the same meaning as in section 4501.01 of the Revised Code.	146 147
<del>(3) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.</del>	148 149
<del>(4)</del> "Sexual conduct" has the same meaning as in section 2907.01 of the Revised Code, except that, as used in this section, it does not include the insertion of an instrument, apparatus, or other object that is not a part of the body into the vaginal or anal opening of another, unless the offender knew at the time of the insertion that the instrument, apparatus, or other object carried the offender's bodily fluid.	150 151 152 153 154 155 156
<del>(5)</del> <u>(4)</u> "Investigator of the bureau of criminal identification and investigation" means an investigator of the bureau of criminal identification and investigation who is commissioned by the superintendent of the bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers pursuant to authority granted under section 109.541 of the Revised Code.	157 158 159 160 161 162 163
<del>(6)</del> <u>(5)</u> "Investigator" has the same meaning as in section 109.541 of the Revised Code.	164 165
<u>(6) "Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.</u>	166 167
<b>Sec. 2903.12.</b> (A) No 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, shall knowingly:	168 169 170 171 172

(1) Cause serious physical harm to another or to another's unborn; 173  
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(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance, as defined in section 2923.11 of the Revised Code. 175  
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(B) Whoever violates this section is guilty of aggravated assault. Except as otherwise provided in this division, aggravated assault is a felony of the fourth degree. If the victim of the offense is a ~~peace~~ law enforcement officer, judge, magistrate, or an investigator of the bureau of criminal identification and investigation 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, aggravated assault is a felony of the third degree. 178  
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Regardless of whether the offense is a felony of the third or fourth degree under this division, if the offender also is convicted of or pleads guilty to a specification as described in section 2941.1423 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, except as otherwise provided in this division, the court shall sentence the offender to a mandatory prison term as provided in division (D)(8) of section 2929.14 of the Revised Code. If the victim of the offense is a ~~peace~~ law enforcement officer, judge, magistrate, or an investigator of the bureau of criminal identification and investigation 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, and if the victim suffered serious physical harm as a result of the commission of the offense, aggravated assault is a felony of the third degree, and the court, pursuant to division (F) of section 2929.13 of the Revised Code, shall impose as a mandatory prison term one of the 187  
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prison terms prescribed for a felony of the third degree.	205
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(C) As used in this section:	207
(1) "Investigator of the bureau of criminal identification and investigation" has the same meaning as in section 2903.11 of the Revised Code.	208 209 210
(2) <del>"Peace officer" has the same meaning as in section 2935.01 of the Revised Code</del> <u>"Judge" and "magistrate" have the same meanings as in section 2903.01 of the Revised Code.</u>	211 212 213
<b>Sec. 2903.13.</b> (A) No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn.	214 215
(B) No person shall recklessly cause serious physical harm to another or to another's unborn.	216 217
(C) Whoever violates this section is guilty of assault, and the court shall sentence the offender as provided in this division and divisions (C)(1), (2), (3), (4), (5), and (6) of this section. Except as otherwise provided in division (C)(1), (2), (3), (4), or (5) of this section, assault is a misdemeanor of the first degree.	218 219 220 221 222
(1) Except as otherwise provided in this division, 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 a violation of this section or section 2903.11 or 2903.16 of the Revised Code, 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.	223 224 225 226 227 228 229 230 231 232 233
(2) If the offense is committed in any of the following	234

circumstances, assault is a felony of the fifth degree: 235

(a) The offense occurs in or on the grounds of a state 236  
correctional institution or an institution of the department of 237  
youth services, the victim of the offense is an employee of the 238  
department of rehabilitation and correction, the department of 239  
youth services, or a probation department or is on the premises of 240  
the particular institution for business purposes or as a visitor, 241  
and the offense is committed by a person incarcerated in the state 242  
correctional institution, by a person institutionalized in the 243  
department of youth services institution pursuant to a commitment 244  
to the department of youth services, by a parolee, by an offender 245  
under transitional control, under a community control sanction, or 246  
on an escorted visit, by a person under post-release control, or 247  
by an offender under any other type of supervision by a government 248  
agency. 249

(b) The offense occurs in or on the grounds of a local 250  
correctional facility, the victim of the offense is an employee of 251  
the local correctional facility or a probation department or is on 252  
the premises of the facility for business purposes or as a 253  
visitor, and the offense is committed by a person who is under 254  
custody in the facility subsequent to the person's arrest for any 255  
crime or delinquent act, subsequent to the person's being charged 256  
with or convicted of any crime, or subsequent to the person's 257  
being alleged to be or adjudicated a delinquent child. 258

(c) The offense occurs off the grounds of a state 259  
correctional institution and off the grounds of an institution of 260  
the department of youth services, the victim of the offense is an 261  
employee of the department of rehabilitation and correction, the 262  
department of youth services, or a probation department, the 263  
offense occurs during the employee's official work hours and while 264  
the employee is engaged in official work responsibilities, and the 265  
offense is committed by a person incarcerated in a state 266

correctional institution or institutionalized in the department of 267  
youth services who temporarily is outside of the institution for 268  
any purpose, by a parolee, by an offender under transitional 269  
control, under a community control sanction, or on an escorted 270  
visit, by a person under post-release control, or by an offender 271  
under any other type of supervision by a government agency. 272

(d) The offense occurs off the grounds of a local 273  
correctional facility, the victim of the offense is an employee of 274  
the local correctional facility or a probation department, the 275  
offense occurs during the employee's official work hours and while 276  
the employee is engaged in official work responsibilities, and the 277  
offense is committed by a person who is under custody in the 278  
facility subsequent to the person's arrest for any crime or 279  
delinquent act, subsequent to the person being charged with or 280  
convicted of any crime, or subsequent to the person being alleged 281  
to be or adjudicated a delinquent child and who temporarily is 282  
outside of the facility for any purpose or by a parolee, by an 283  
offender under transitional control, under a community control 284  
sanction, or on an escorted visit, by a person under post-release 285  
control, or by an offender under any other type of supervision by 286  
a government agency. 287

(e) The victim of the offense is a school teacher or 288  
administrator or a school bus operator, and the offense occurs in 289  
a school, on school premises, in a school building, on a school 290  
bus, or while the victim is outside of school premises or a school 291  
bus and is engaged in duties or official responsibilities 292  
associated with the victim's employment or position as a school 293  
teacher or administrator or a school bus operator, including, but 294  
not limited to, driving, accompanying, or chaperoning students at 295  
or on class or field trips, athletic events, or other school 296  
extracurricular activities or functions outside of school 297  
premises. 298

(f) The offense occurs in or on the grounds of a courthouse 299  
or on premises where a courtroom is located, the offense is 300  
committed by a person who is in or on those grounds or on those 301  
premises by reason of or in relation to an action or proceeding 302  
that is occurring, has occurred, or is scheduled to occur at the 303  
courthouse or courtroom, and the offense occurs during the action 304  
or proceeding or while the parties to the action or proceeding or 305  
the officials involved in conducting the action or proceeding are 306  
on their way to or are departing after the action or proceeding. 307

(3) If the victim of the offense is a ~~peace~~ law enforcement 308  
officer, judge, magistrate, or an investigator of the bureau of 309  
criminal identification and investigation whom the offender knows 310  
or has reasonable cause to know is a law enforcement officer, 311  
judge, magistrate, or investigator of the bureau of criminal 312  
identification and investigation, a firefighter, or a person 313  
performing emergency medical service, while in the performance of 314  
their official duties, assault is a felony of the fourth degree. 315

(4) If the victim of the offense is a ~~peace~~ law enforcement 317  
officer, judge, magistrate, or an investigator of the bureau of 318  
criminal identification and investigation whom the offender knows 319  
or has reasonable cause to know is a law enforcement officer, 320  
judge, magistrate, or investigator of the bureau of criminal 321  
identification and investigation, and if the victim suffered 322  
serious physical harm as a result of the commission of the 323  
offense, assault is a felony of the fourth degree, and the court, 324  
pursuant to division (F) of section 2929.13 of the Revised Code, 325  
shall impose as a mandatory prison term one of the prison terms 326  
prescribed for a felony of the fourth degree that is at least 327  
twelve months in duration. 328

(5) If the victim of the offense is an officer or employee of 329  
a public children services agency or a private child placing 330

agency whom the offender knows or has reasonable cause to know is 331  
an officer or employee of a public children services agency or 332  
private child placing agency and the offense relates to the 333  
officer's or employee's performance or anticipated performance of 334  
official responsibilities or duties, assault is either a felony of 335  
the fifth degree or, if the offender previously has been convicted 336  
of or pleaded guilty to an offense of violence, the victim of that 337  
prior offense was an officer or employee of a public children 338  
services agency or private child placing agency whom the offender 339  
knew or had reasonable cause to know was an officer or employee of 340  
a public children services agency or private child placing agency, 341  
and that prior offense related to the officer's or employee's 342  
performance or anticipated performance of official 343  
responsibilities or duties, a felony of the fourth degree. 344

(6) If an offender who is convicted of or pleads guilty to 345  
assault when it is a misdemeanor also is convicted of or pleads 346  
guilty to a specification as described in section 2941.1423 of the 347  
Revised Code that was included in the indictment, count in the 348  
indictment, or information charging the offense, the court shall 349  
sentence the offender to a mandatory jail term as provided in 350  
division (G) of section 2929.24 of the Revised Code. 351

If an offender who is convicted of or pleads guilty to 352  
assault when it is a felony also is convicted of or pleads guilty 353  
to a specification as described in section 2941.1423 of the 354  
Revised Code that was included in the indictment, count in the 355  
indictment, or information charging the offense, except as 356  
otherwise provided in division (C)(4) of this section, the court 357  
shall sentence the offender to a mandatory prison term as provided 358  
in division (D)(8) of section 2929.14 of the Revised Code. 359

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(D) As used in this section: 361

(1) ~~"Peace officer" has the same meaning as in section~~ 362

<del>2935.01 of the Revised Code.</del>	363
<del>(2)</del> "Firefighter" has the same meaning as in section 3937.41 of the Revised Code.	364 365
<del>(3)</del> <u>(2)</u> "Emergency medical service" has the same meaning as in section 4765.01 of the Revised Code.	366 367
<del>(4)</del> <u>(3)</u> "Local correctional facility" means a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail established under section 341.23 or 753.21 of the Revised Code, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.	368 369 370 371 372 373 374 375
<del>(5)</del> <u>(4)</u> "Employee of a local correctional facility" means a person who is an employee of the political subdivision or of one or more of the affiliated political subdivisions that operates the local correctional facility and who operates or assists in the operation of the facility.	376 377 378 379 380
<del>(6)</del> <u>(5)</u> "School teacher or administrator" means either of the following:	381 382
(a) A person who is employed in the public schools of the state under a contract described in section 3319.08 of the Revised Code in a position in which the person is required to have a certificate issued pursuant to sections 3319.22 to 3319.311 of the Revised Code.	383 384 385 386 387
(b) A person who is employed by a nonpublic school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and who is certificated in accordance with section 3301.071 of the Revised Code.	388 389 390 391
<del>(7)</del> <u>(6)</u> "Community control sanction" has the same meaning as	392

in section 2929.01 of the Revised Code. 393

~~(8)~~(7) "Escorted visit" means an escorted visit granted under 394  
section 2967.27 of the Revised Code. 395

~~(9)~~(8) "Post-release control" and "transitional control" have 396  
the same meanings as in section 2967.01 of the Revised Code. 397

~~(10)~~(9) "Investigator of the bureau of criminal 398  
identification and investigation" has the same meaning as in 399  
section 2903.11 of the Revised Code. 400

(10) "Judge" and "magistrate" have the same meanings as in 401  
section 2903.01 of the Revised Code. 402

**Sec. 2903.21.** (A) No person shall knowingly cause another to 403  
believe that the offender will cause serious physical harm to the 404  
person or property of the other person, the other person's unborn, 405  
or a member of the other person's immediate family. 406

(B) Whoever violates this section is guilty of aggravated 407  
menacing. Except as otherwise provided in this division, 408  
aggravated menacing is a misdemeanor of the first degree. If the 409  
victim of the offense is an a law enforcement officer, judge, 410  
magistrate, or officer or employee of a public children services 411  
agency or a private child placing agency whom the offender knows 412  
or has reasonable cause to know is a law enforcement officer, 413  
judge, magistrate, or officer or employee of a public children 414  
services agency or private child placing agency and the offense 415  
relates to the law enforcement officer's, judge's, magistrate's, 416  
officer's, or employee's performance or anticipated performance of 417  
official responsibilities or duties, aggravated menacing is a 418  
felony of the fifth degree or, if the offender previously has been 419  
convicted of or pleaded guilty to an offense of violence, the 420  
victim of that prior offense was an a law enforcement officer, 421  
judge, magistrate, or officer or employee of a public children 422

services agency or private child placing agency whom the offender 423  
knew or had reasonable cause to know was a law enforcement 424  
officer, judge, magistrate, or officer or employee of a public 425  
children services agency or private child placing agency, and that 426  
prior offense related to the law enforcement officer's, judge's, 427  
magistrate's, officer's, or employee's performance or anticipated 428  
performance of official responsibilities or duties, a felony of 429  
the fourth degree. 430

(C) As used in this section, "judge" and "magistrate" have 431  
the same meanings as in section 2903.01 of the Revised Code. 432

**Sec. 2921.01.** As used in sections 2921.01 to 2921.45 of the 433  
Revised Code: 434

(A) "Public official" means any elected or appointed officer, 435  
or employee, or agent of the state or any political subdivision, 436  
whether in a temporary or permanent capacity, and includes, but is 437  
not limited to, legislators, judges, and law enforcement officers. 438

(B) "Public servant" means any of the following: 439

(1) Any public official; 440

(2) Any person performing ad hoc a governmental function, 441  
including, but not limited to, a juror, member of a temporary 442  
commission, master, arbitrator, advisor, or consultant; 443

(3) A person who is a candidate for public office, whether or 444  
not the person is elected or appointed to the office for which the 445  
person is a candidate. A person is a candidate for purposes of 446  
this division if the person has been nominated according to law 447  
for election or appointment to public office, or if the person has 448  
filed a petition or petitions as required by law to have the 449  
person's name placed on the ballot in a primary, general, or 450  
special election, or if the person campaigns as a write-in 451  
candidate in any primary, general, or special election. 452

(C) "Party official" means any person who holds an elective 453  
or appointive post in a political party in the United States or 454  
this state, by virtue of which the person directs, conducts, or 455  
participates in directing or conducting party affairs at any level 456  
of responsibility. 457

(D) "Official proceeding" means any proceeding before a 458  
legislative, judicial, administrative, or other governmental 459  
agency or official authorized to take evidence under oath, and 460  
includes any proceeding before a referee, hearing examiner, 461  
commissioner, notary, or other person taking testimony or a 462  
deposition in connection with an official proceeding. 463

(E) "Detention" means arrest; confinement in any vehicle 464  
subsequent to an arrest; confinement in any public or private 465  
facility for custody of persons charged with or convicted of crime 466  
in this state or another state or under the laws of the United 467  
States or alleged or found to be a delinquent child or unruly 468  
child in this state or another state or under the laws of the 469  
United States; hospitalization, institutionalization, or 470  
confinement in any public or private facility that is ordered 471  
pursuant to or under the authority of section 2945.37, 2945.371, 472  
2945.38, 2945.39, 2945.40, 2945.401, or 2945.402 of the Revised 473  
Code; confinement in any vehicle for transportation to or from any 474  
facility of any of those natures; detention for extradition or 475  
deportation; except as provided in this division, supervision by 476  
any employee of any facility of any of those natures that is 477  
incidental to hospitalization, institutionalization, or 478  
confinement in the facility but that occurs outside the facility; 479  
supervision by an employee of the department of rehabilitation and 480  
correction of a person on any type of release from a state 481  
correctional institution; or confinement in any vehicle, airplane, 482  
or place while being returned from outside of this state into this 483  
state by a private person or entity pursuant to a contract entered 484

into under division (E) of section 311.29 of the Revised Code or 485  
division (B) of section 5149.03 of the Revised Code. For a person 486  
confined in a county jail who participates in a county jail 487  
industry program pursuant to section 5147.30 of the Revised Code, 488  
"detention" includes time spent at an assigned work site and going 489  
to and from the work site. 490

(F) "Detention facility" means any public or private place 491  
used for the confinement of a person charged with or convicted of 492  
any crime in this state or another state or under the laws of the 493  
United States or alleged or found to be a delinquent child or 494  
unruly child in this state or another state or under the laws of 495  
the United States. 496

(G) "Valuable thing or valuable benefit" includes, but is not 497  
limited to, a contribution. This inclusion does not indicate or 498  
imply that a contribution was not included in those terms before 499  
September 17, 1986. 500

(H) "Campaign committee," "contribution," "political action 501  
committee," "legislative campaign fund," "political party," and 502  
"political contributing entity" have the same meanings as in 503  
section 3517.01 of the Revised Code. 504

(I) "Provider agreement" and "medical assistance program" 505  
have the same meanings as in section 2913.40 of the Revised Code. 506

(J)(1) "Unborn of a public servant, party official, attorney, 507  
or witness" means any of the following: 508

(a) For purposes of section 2921.03 of the Revised Code, a 509  
member of the species homo sapiens who is or was carried in the 510  
womb of a public servant, a party official, or an attorney or 511  
witness who was involved in a civil action or proceeding, or who 512  
is or was the offspring of a public servant, a party official, or 513  
an attorney or witness who was involved in a civil action or 514  
proceeding and is or was carried in the womb of another, during a 515

period that begins with fertilization and that continues unless 516  
and until live birth occurs. 517

(b) For purposes of section 2921.05 of the Revised Code, a 518  
member of the species homo sapiens who is or was carried in the 519  
womb of a public servant, a party official, or an attorney or 520  
witness who was involved in civil or criminal action or 521  
proceeding, or who is or was the offspring of a public servant, a 522  
party official, or an attorney or witness who was involved in a 523  
civil or criminal action or proceeding and is or was carried in 524  
the womb of another, during a period that begins with 525  
fertilization and that continues unless and until live birth 526  
occurs. 527

(2) Notwithstanding divisions (J)(1)(a) and (b) of this 528  
section, in no case shall the definition of the term "unborn of a 529  
public servant, party official, attorney, or witness" that is set 530  
forth in those divisions be applied or construed in any of the 531  
following manners: 532

(a) Except as otherwise provided in division (J)(2)(a) of 533  
this section, in a manner so that section 2921.03 or 2921.05 of 534  
the Revised Code prohibits or is construed as prohibiting any 535  
pregnant woman or her physician from performing an abortion with 536  
the actual consent of the pregnant woman, with the consent of the 537  
pregnant woman implied by law in a medical emergency, or with the 538  
approval of a person otherwise authorized by law to consent to 539  
medical treatment on behalf of the pregnant woman. An abortion 540  
that is performed without the consent or approval described in the 541  
immediately preceding sentence may be punished as a violation of 542  
section 2921.03 or 2921.05 of the Revised Code, as applicable. An 543  
abortion that is performed with the consent or approval described 544  
in the second immediately preceding sentence, but that violates 545  
section 2919.12, division (B) of section 2919.13, or section 546  
2919.151, 2919.17, or 2919.18 of the Revised Code, may be punished 547

as a violation of section 2919.12, division (B) of section 2919.13, or section 2919.151, 2919.17, or 2919.18 of the Revised Code, as applicable.

(b) In a manner so that section 2921.03 or 2921.05 of the Revised Code is applied or is construed as applying to a woman based on an act or omission of the woman that occurs while she is or was pregnant and that results in any act, occurrence, or consequence identified in divisions (C)(2)(a) to (e) of section 2903.09 of the Revised Code.

**Sec. 2921.03.** (A) No person, knowingly and by force, by unlawful threat of harm to any person or property, by unlawful threat of harm to an unborn of the public servant, party official, attorney, or witness involved in the action or proceeding, 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, shall attempt to influence, intimidate, or hinder a public servant, a party official, or an attorney or witness involved in a civil action or proceeding in the discharge of ~~the person's~~ the duties of the public servant, party official, attorney, or witness.

(B) Whoever violates this section is guilty of intimidation, a felony of the third degree.

(C) For purposes of division (A) of this section, an "unlawful threat" includes a threat that is made directly or indirectly.

(D) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this

division is not the exclusive remedy of a person who incurs 579  
injury, death, or loss to person or property as a result of a 580  
violation of this section. 581

**Sec. 2921.05.** (A) No person, ~~purposely and by force or by~~ 582  
~~unlawful threat of harm to any person or property, shall retaliate~~ 583  
~~against~~ because a public servant, a party official, or an attorney 584  
or witness who was involved in a civil or criminal action or 585  
proceeding ~~because the public servant, party official, attorney,~~ 586  
~~or witness~~ discharged the duties of the public servant, party 587  
official, attorney, or witness, shall knowingly do any of the 588  
following: 589

(1) Use force against or make an unlawful threat of harm to 590  
any person or property; 591

(2) Use force against or make an unlawful threat to harm an 592  
unborn of the public servant, party official, attorney, or 593  
witness. 594

(B) No person, ~~purposely and by~~ shall knowingly use force 595  
against or ~~by~~ make an unlawful threat of harm to any person or 596  
property, ~~shall retaliate against the~~ because a victim of a crime 597  
~~because the victim~~ filed or prosecuted criminal charges. 598

(C) For purposes of divisions (A)(1) and (2) of this section, 599  
an "unlawful threat" includes a threat that is made directly or 600  
indirectly. 601

(D) Whoever violates this section is guilty of retaliation, a 602  
felony of the third degree. 603

**Sec. 2929.04.** (A) Imposition of the death penalty for 604  
aggravated murder is precluded unless one or more of the following 605  
is specified in the indictment or count in the indictment pursuant 606  
to section 2941.14 of the Revised Code and proved beyond a 607  
reasonable doubt: 608

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

(2) The offense was committed for hire.

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

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

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

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

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

of an offense an essential element of which was the purposeful 640  
killing of or attempt to kill another, or the offense at bar was 641  
part of a course of conduct involving the purposeful killing of or 642  
attempt to kill two or more persons by the offender. 643

(6) The victim of the offense was a law enforcement officer, 644  
as defined in section 2911.01 of the Revised Code, or a judge or 645  
magistrate, as defined in section 2903.01 of the Revised Code, 646  
whom the offender had reasonable cause to know or knew to be a law 647  
enforcement officer or a judge or magistrate as so defined, and 648  
either the victim, at the time of the commission of the offense, 649  
was engaged in the victim's duties, or it was the offender's 650  
specific purpose to kill a law enforcement officer or a judge or 651  
magistrate as so defined. 652

(7) The offense was committed while the offender was 653  
committing, attempting to commit, or fleeing immediately after 654  
committing or attempting to commit kidnapping, rape, aggravated 655  
arson, aggravated robbery, or aggravated burglary, and either the 656  
offender was the principal offender in the commission of the 657  
aggravated murder or, if not the principal offender, committed the 658  
aggravated murder with prior calculation and design. 659

(8) The victim of the aggravated murder was a witness to an 660  
offense who was purposely killed to prevent the victim's testimony 661  
in any criminal proceeding and the aggravated murder was not 662  
committed during the commission, attempted commission, or flight 663  
immediately after the commission or attempted commission of the 664  
offense to which the victim was a witness, or the victim of the 665  
aggravated murder was a witness to an offense and was purposely 666  
killed in retaliation for the victim's testimony in any criminal 667  
proceeding. 668

(9) The offender, in the commission of the offense, 669  
purposefully caused the death of another who was under thirteen 670  
years of age at the time of the commission of the offense, and 671

either the offender was the principal offender in the commission 672  
of the offense or, if not the principal offender, committed the 673  
offense with prior calculation and design. 674

(10) The offense was committed while the offender was 675  
committing, attempting to commit, or fleeing immediately after 676  
committing or attempting to commit terrorism. 677

(B) If one or more of the aggravating circumstances listed in 678  
division (A) of this section is specified in the indictment or 679  
count in the indictment and proved beyond a reasonable doubt, and 680  
if the offender did not raise the matter of age pursuant to 681  
section 2929.023 of the Revised Code or if the offender, after 682  
raising the matter of age, was found at trial to have been 683  
eighteen years of age or older at the time of the commission of 684  
the offense, the court, trial jury, or panel of three judges shall 685  
consider, and weigh against the aggravating circumstances proved 686  
beyond a reasonable doubt, the nature and circumstances of the 687  
offense, the history, character, and background of the offender, 688  
and all of the following factors: 689

(1) Whether the victim of the offense induced or facilitated 690  
it; 691

(2) Whether it is unlikely that the offense would have been 692  
committed, but for the fact that the offender was under duress, 693  
coercion, or strong provocation; 694

(3) Whether, at the time of committing the offense, the 695  
offender, because of a mental disease or defect, lacked 696  
substantial capacity to appreciate the criminality of the 697  
offender's conduct or to conform the offender's conduct to the 698  
requirements of the law; 699

(4) The youth of the offender; 700

(5) The offender's lack of a significant history of prior 701  
criminal convictions and delinquency adjudications; 702

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

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

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

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

**Section 2.** That existing sections 2903.01, 2903.11, 2903.12, 2903.13, 2903.21, 2921.01, 2921.03, 2921.05, and 2929.04 of the Revised Code are hereby repealed.

**Section 3.** Section 2921.03 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 88 and Sub. H.B. 644 of the 121st General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composites are the resulting versions of the sections in effect prior to the effective date of the sections as presented in this act.