

As Reported by the House Criminal Justice Committee

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 38

Representative Greenspan

**Cosponsors: Representatives Anielski, Barnes, Goodman, Keller, Kick, Lipps,
Patton, Perales, Riedel, Retherford, Sprague, Thompson, Wiggam, Young,
Manning, Rezabek**

A BILL

To amend sections 2903.01, 2903.11, and 2923.02 of
the Revised Code to provide that purposely
causing the death of a first responder or
military member is aggravated murder and to
require an offender to serve a mandatory prison
term for certain types of felonious assault or
attempted aggravated murder when the victim is a
first responder or military member.

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

Section 1. That sections 2903.01, 2903.11, and 2923.02 of
the Revised Code be amended to read as follows:

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

(B) No person shall purposely cause the death of another
or the unlawful termination of another's pregnancy while
committing or attempting to commit, or while fleeing immediately

after committing or attempting to commit, kidnapping, rape, 17
aggravated arson, arson, aggravated robbery, robbery, aggravated 18
burglary, burglary, trespass in a habitation when a person is 19
present or likely to be present, terrorism, or escape. 20

(C) No person shall purposely cause the death of another 21
who is under thirteen years of age at the time of the commission 22
of the offense. 23

(D) No person who is under detention as a result of having 24
been found guilty of or having pleaded guilty to a felony or who 25
breaks that detention shall purposely cause the death of 26
another. 27

(E) No person shall purposely cause the death of a law 28
enforcement officer whom the offender knows or has reasonable 29
cause to know is a law enforcement officer when either of the 30
following applies: 31

(1) The victim, at the time of the commission of the 32
offense, is engaged in the victim's duties. 33

(2) It is the offender's specific purpose to kill a law 34
enforcement officer. 35

(F) No person shall purposely cause the death of a first 36
responder or military member whom the offender knows or has 37
reasonable cause to know is a first responder or military member 38
when it is the offender's specific purpose to kill a first 39
responder or military member. 40

(G) Whoever violates this section is guilty of aggravated 41
murder, and shall be punished as provided in section 2929.02 of 42
the Revised Code. 43

~~(G)~~ (H) As used in this section: 44

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

(2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code and also includes any federal law enforcement officer as defined in section 2921.51 of the Revised Code and anyone who has previously served as a law enforcement officer or federal law enforcement officer.

(3) "First responder" means an emergency medical service provider, a firefighter, or any other emergency response personnel, or anyone who has previously served as a first responder.

(4) "Military member" means a member of the armed forces of the United States, reserves, or Ohio national guard, a participant in ROTC, JROTC, or any similar military training program, or anyone who has previously served in the military.

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

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

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

(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:

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

in the sexual conduct; 73

(2) Engage in sexual conduct with a person whom the 74
offender knows or has reasonable cause to believe lacks the 75
mental capacity to appreciate the significance of the knowledge 76
that the offender has tested positive as a carrier of a virus 77
that causes acquired immunodeficiency syndrome; 78

(3) Engage in sexual conduct with a person under eighteen 79
years of age who is not the spouse of the offender. 80

(C) The prosecution of a person under this section does 81
not preclude prosecution of that person under section 2907.02 of 82
the Revised Code. 83

(D) (1) (a) Whoever violates this section is guilty of 84
felonious assault. Except as otherwise provided in this division 85
or division (D) (1) (b), (c), or (d) of this section, felonious 86
assault is a felony of the second degree. If the victim of a 87
violation of division (A) of this section is a peace officer or 88
an investigator of the bureau of criminal identification and 89
investigation, felonious assault is a felony of the first 90
degree. 91

(b) Regardless of whether the felonious assault is a 92
felony of the first or second degree under division (D) (1) (a) of 93
this section, if the offender also is convicted of or pleads 94
guilty to a specification as described in section 2941.1423 of 95
the Revised Code that was included in the indictment, count in 96
the indictment, or information charging the offense, except as 97
otherwise provided in this division or unless a longer prison 98
term is required under any other provision of law, the court 99
shall sentence the offender to a mandatory prison term as 100
provided in division (B) (8) of section 2929.14 of the Revised 101

Code. If the victim of the offense is a peace officer or an 102
investigator of the bureau of criminal identification and 103
investigation, and if the victim suffered serious physical harm 104
as a result of the commission of the offense, felonious assault 105
is a felony of the first degree, and the court, pursuant to 106
division (F) of section 2929.13 of the Revised Code, shall 107
impose as a mandatory prison term one of the prison terms 108
prescribed for a felony of the first degree. 109

(c) If the victim of a violation of division (A) of this 110
section is a first responder or military member and the victim 111
was specifically targeted for being a first responder or 112
military member, felonious assault is a felony of the first 113
degree. 114

(d) If the victim of a violation of division (A) of this 115
section is a first responder or military member, the victim was 116
specifically targeted for being a first responder or military 117
member, and the victim suffered serious physical harm as a 118
result of the commission of the offense, felonious assault is a 119
felony of the first degree, and the court, pursuant to division 120
(F) of section 2929.13 of the Revised Code, shall impose as a 121
mandatory prison term one of the prison terms prescribed for a 122
felony of the first degree. 123

(2) In addition to any other sanctions imposed pursuant to 124
division (D)(1) of this section for felonious assault committed 125
in violation of division (A)(2) of this section, if the deadly 126
weapon used in the commission of the violation is a motor 127
vehicle, the court shall impose upon the offender a class two 128
suspension of the offender's driver's license, commercial 129
driver's license, temporary instruction permit, probationary 130
license, or nonresident operating privilege as specified in 131

division (A) (2) of section 4510.02 of the Revised Code. 132

(E) As used in this section: 133

(1) "Deadly weapon" and "dangerous ordnance" have the same 134
meanings as in section 2923.11 of the Revised Code. 135

(2) "Motor vehicle" has the same meaning as in section 136
4501.01 of the Revised Code. 137

(3) "Peace officer" has the same meaning as in section 138
2935.01 of the Revised Code and also includes any federal law 139
enforcement officer as defined in section 2921.51 of the Revised 140
Code and anyone who has previously served as a peace officer or 141
federal law enforcement officer. 142

(4) "Sexual conduct" has the same meaning as in section 143
2907.01 of the Revised Code, except that, as used in this 144
section, it does not include the insertion of an instrument, 145
apparatus, or other object that is not a part of the body into 146
the vaginal or anal opening of another, unless the offender knew 147
at the time of the insertion that the instrument, apparatus, or 148
other object carried the offender's bodily fluid. 149

(5) "Investigator of the bureau of criminal identification 150
and investigation" means an investigator of the bureau of 151
criminal identification and investigation who is commissioned by 152
the superintendent of the bureau as a special agent for the 153
purpose of assisting law enforcement officers or providing 154
emergency assistance to peace officers pursuant to authority 155
granted under section 109.541 of the Revised Code. 156

(6) "Investigator" has the same meaning as in section 157
109.541 of the Revised Code. 158

(7) "First responder" has the same meaning as in section 159

2903.01 of the Revised Code. 160

(8) "Military member" has the same meaning as in section 161
2903.01 of the Revised Code. 162

Sec. 2923.02. (A) No person, purposely or knowingly, and 163
when purpose or knowledge is sufficient culpability for the 164
commission of an offense, shall engage in conduct that, if 165
successful, would constitute or result in the offense. 166

(B) It is no defense to a charge under this section that, 167
in retrospect, commission of the offense that was the object of 168
the attempt was either factually or legally impossible under the 169
attendant circumstances, if that offense could have been 170
committed had the attendant circumstances been as the actor 171
believed them to be. 172

(C) No person who is convicted of committing a specific 173
offense, of complicity in the commission of an offense, or of 174
conspiracy to commit an offense shall be convicted of an attempt 175
to commit the same offense in violation of this section. 176

(D) It is an affirmative defense to a charge under this 177
section that the actor abandoned the actor's effort to commit 178
the offense or otherwise prevented its commission, under 179
circumstances manifesting a complete and voluntary renunciation 180
of the actor's criminal purpose. 181

(E) (1) Whoever violates this section is guilty of an 182
attempt to commit an offense. An attempt to commit aggravated 183
murder, murder, or an offense for which the maximum penalty is 184
imprisonment for life is a felony of the first degree. An 185
attempt to commit a drug abuse offense for which the penalty is 186
determined by the amount or number of unit doses of the 187
controlled substance involved in the drug abuse offense is an 188

offense of the same degree as the drug abuse offense attempted 189
would be if that drug abuse offense had been committed and had 190
involved an amount or number of unit doses of the controlled 191
substance that is within the next lower range of controlled 192
substance amounts than was involved in the attempt. An attempt 193
to commit any other offense is an offense of the next lesser 194
degree than the offense attempted. In the case of an attempt to 195
commit an offense other than a violation of Chapter 3734. of the 196
Revised Code that is not specifically classified, an attempt is 197
a misdemeanor of the first degree if the offense attempted is a 198
felony, and a misdemeanor of the fourth degree if the offense 199
attempted is a misdemeanor. In the case of an attempt to commit 200
a violation of any provision of Chapter 3734. of the Revised 201
Code, other than section 3734.18 of the Revised Code, that 202
relates to hazardous wastes, an attempt is a felony punishable 203
by a fine of not more than twenty-five thousand dollars or 204
imprisonment for not more than eighteen months, or both. An 205
attempt to commit a minor misdemeanor, or to engage in 206
conspiracy, is not an offense under this section. 207

(2) If a person is convicted of or pleads guilty to 208
attempted rape and also is convicted of or pleads guilty to a 209
specification of the type described in section 2941.1418, 210
2941.1419, or 2941.1420 of the Revised Code, the offender shall 211
be sentenced to a prison term or term of life imprisonment 212
pursuant to section 2971.03 of the Revised Code. 213

(3) In addition to any other sanctions imposed pursuant to 214
division (E)(1) of this section for an attempt to commit 215
aggravated murder or murder in violation of division (A) of this 216
section, if the offender used a motor vehicle as the means to 217
attempt to commit the offense, the court shall impose upon the 218
offender a class two suspension of the offender's driver's 219

license, commercial driver's license, temporary instruction 220
permit, probationary license, or nonresident operating privilege 221
as specified in division (A) (2) of section 4510.02 of the 222
Revised Code. 223

(4) If a person is convicted of or found guilty of an 224
attempt to commit aggravated murder of the type described in 225
division (E) or (F) of section 2903.01 of the Revised Code, the 226
court shall impose as a mandatory prison term one of the prison 227
terms prescribed for a felony of the first degree. 228

(F) As used in this section: 229

(1) "Drug abuse offense" has the same meaning as in 230
section 2925.01 of the Revised Code. 231

(2) "Motor vehicle" has the same meaning as in section 232
4501.01 of the Revised Code. 233

Section 2. That existing sections 2903.01, 2903.11, and 234
2923.02 of the Revised Code are hereby repealed. 235

Section 3. Section 2923.02 of the Revised Code is 236
presented in this act as a composite of the section as amended 237
by both Am. Sub. H.B. 461 and Am. Sub. S.B. 260 of the 126th 238
General Assembly. The General Assembly, applying the principle 239
stated in division (B) of section 1.52 of the Revised Code that 240
amendments are to be harmonized if reasonably capable of 241
simultaneous operation, finds that the composite is the 242
resulting version of the section in effect prior to the 243
effective date of the section as presented in this act. 244