

**As Passed by the House**

**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, Arndt, Brenner, Butler, Carfagna, Dever, Duffey, Edwards, Faber, Gavarone, Ginter, Hambley, Householder, Hughes, Johnson, Koehler, Landis, Lanese, LaTourette, O'Brien, Romanchuk, Ryan, Schaffer, Schuring, Smith, R., Stein**

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**A BILL**

To amend sections 2903.01, 2903.11, and 2923.02 of	1
the Revised Code to provide that purposely	2
causing the death of a first responder or	3
military member is aggravated murder and to	4
require an offender to serve a mandatory prison	5
term for certain types of felonious assault or	6
attempted aggravated murder when the victim is a	7
first responder or military member.	8

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

<b>Section 1.</b> That sections 2903.01, 2903.11, and 2923.02 of	9
the Revised Code be amended to read as follows:	10

<b>Sec. 2903.01.</b> (A) No person shall purposely, and with	11
prior calculation and design, cause the death of another or the	12
unlawful termination of another's pregnancy.	13

(B) No person shall purposely cause the death of another	14
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or the unlawful termination of another's pregnancy while 15  
committing or attempting to commit, or while fleeing immediately 16  
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:

(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 72  
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