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# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Kunze and Antonio

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### Summary

- Expands the offense of “domestic violence” to also apply to acts committed against dating partners.
- Expands the offense of “domestic violence” to also prohibit knowingly strangling a family or household member or dating partner and provides special penalties for domestic violence based on strangulation.
- Creates as an affirmative defense to a charge of “domestic violence” based on strangulation that the act was done to the family or household member or dating partner as part of a medical or other procedure undertaken for the victim’s benefit.
- Prohibits a person from possessing, carrying, or using a firearm or dangerous ordnance if the person has been convicted of domestic violence or assault if the victim was a family or household member.
- Prohibits a person from possessing, carrying, or using a firearm or dangerous ordnance if the person is subject to a temporary protection order or subject to a court order that restrains the person from placing a family or household member or dating partner in reasonable fear of bodily injury.
- Allows a petitioner for a protection order described above to include a statement in the petition that describes the number, types, and locations of any firearms that the petitioner knows to be in the defendant or respondent’s possession or control.
- Requires the court issuing a protection order described above, or in which a person is convicted of domestic violence or assault, to do both of the following:
  - Determine whether, as a result of the order or offense, the defendant, respondent, or offender is prohibited from possessing a firearm or dangerous ordnance;
  - If possession is prohibited, order transfer to a law enforcement agency or federally licensed firearms dealer of all firearms in the person’s possession or control.

- Requires that a protection order described above include a written notice that states the defendant's or respondent's obligations under the bill.
- Requires a defendant, respondent, or offender who is issued a firearm transfer order as described above to comply with the order within 24 hours after being served with the order.
- Requires a defendant, respondent, or offender who is issued a firearm transfer order as described above to file proof of transfer with the court or an affidavit that the person had no firearms in the person's possession or control at the time of service and has none currently.
- If a defendant or respondent transfers firearms pursuant to a protection order:
  - Requires the law enforcement agency or firearms dealer to return the firearms upon the expiration of the order, at the person's request, unless the order is extended, another protection order is in effect, or the person is otherwise prohibited from possessing a firearm.
  - Allows the person to make a one-time sale to a federally licensed firearms dealer of any transferred firearms in the agency's possession when the order expires if the person is otherwise prohibited from possessing a firearm, and declares firearms that are not sold to be abandoned.
- Requires a law enforcement agency to notify an offender who is required to transfer firearms that any firearms transferred to the agency will be considered abandoned and are subject to disposal.
- Permits law enforcement agencies to establish policies for the disposal of abandoned firearms, provided the policies require that the person who transferred the firearms receives notice of, and any financial value from, the disposal.
- Authorizes a law enforcement agency or federally licensed firearms dealer to charge a reasonable fee for the storage of any firearm transferred by a defendant or respondent pursuant to a protection order.
- Classifies failure to comply with the transfer requirements of the bill as a fifth degree felony.
- Requires a law enforcement agency in possession of an outstanding arrest warrant or summons for a charge of domestic violence to enter information about the warrant or summons into the law enforcement automated data system.
- Makes an appropriation to fund domestic violence programs through the Domestic Violence Program Fund.

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## Detailed Analysis

### Expansion of offense of “domestic violence”

#### Dating partners

The bill expands the offense of domestic violence to also prohibit actions against “dating partners.” The expansion prohibits a person from knowingly causing or attempting to cause physical harm to a dating partner, from recklessly causing serious physical harm to a dating partner, or, by threat of force, from knowingly causing a dating partner to believe that the offender will cause imminent physical harm to the dating partner.<sup>1</sup> A “dating partner” under the bill means a person with whom the offender is or was in a dating relationship. Under

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<sup>1</sup> R.C. 2919.25(A) to (C) and (E).

continuing law, a “dating relationship” means a relationship between individuals who have, or have had, a relationship of romantic or intimate nature. “Dating relationship” does not include a casual acquaintanceship or ordinary fraternization in a business or social context.<sup>2</sup>

### **New prohibition**

The bill prohibits any person from knowingly impeding the normal breathing or circulation of the blood of a “family or household member” (see below) or dating partner by applying pressure to the throat or neck, or by blocking the nose or mouth, of the family or household member or dating partner. A person who violates this strangulation prohibition is guilty of domestic violence.<sup>3</sup> In a prosecution for domestic violence based on strangulation, it is not required to allege or prove that the family or household member or dating partner who is the victim suffered physical harm, serious physical harm, or visible injury.<sup>4</sup>

Under the bill, it is an affirmative defense to a charge of domestic violence based on strangulation that the act was done to the family or household member or dating partner as part of a medical or other procedure undertaken to aid or benefit the victim.<sup>5</sup>

### **Penalties**

#### **Domestic violence based on strangulation**

Domestic violence based on strangulation under the bill is generally a third degree felony. If the offender has previously been convicted of domestic violence or has twice previously been convicted of an offense of violence, domestic violence based on strangulation is a second degree felony.<sup>6</sup> If domestic violence based on strangulation is a third degree felony, the bill requires a mandatory prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months. If domestic violence based on strangulation is a second degree felony, the bill requires a mandatory prison term of 2, 3, 4, 5, 6, 7, or 8 years.<sup>7</sup>

#### **Mandatory prison terms**

The bill also increases mandatory prison terms for third degree felony domestic violence offenses generally. Under the bill, a person convicted of domestic violence that is a third degree felony is subject to a mandatory prison term of 12, 18, 24, 30, 36, 42, 48, 54, or 60 months. Current law imposes a mandatory prison term of 9, 12, 18, 24, 30, or 36 months for a third degree felony domestic violence offense, depending on the circumstances.<sup>8</sup>

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<sup>2</sup> R.C. 2919.25(J)(5) and 3113.31(A)(8).

<sup>3</sup> R.C. 2919.25(D) and (E).

<sup>4</sup> R.C. 2919.25(G).

<sup>5</sup> R.C. 2919.25(H).

<sup>6</sup> R.C. 2919.25(E)(6) and (7).

<sup>7</sup> R.C. 2919.25(E)(6), (7), and (8)(f) and 2929.14(A)(3).

<sup>8</sup> R.C. 2919.25(E)(8)(d) and (e) and 2929.14(A)(3)(a).

A mandatory prison term imposed as described above cannot be reduced pursuant to judicial release, earned credits, the 80% release mechanism, or any other release provision under R.C. Chapter 2967. or 5120.<sup>9</sup>

### **Definition of “family or household member”**

As used in the bill, “family or household member” means any of the following:

1. Any of the following who is residing with or has resided with the offender or respondent, whichever is applicable: (a) a spouse, a person living as a spouse (a defined term), or a former spouse of the offender or respondent, (b) a parent, a foster parent, or a child of the offender or respondent, or another person related by consanguinity or affinity to the offender or respondent, or (c) a parent or a child of a spouse, person living as a spouse, or former spouse of the offender or respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender or respondent.
2. The natural parent of any child of whom the offender or respondent, whichever is applicable, is the other natural parent or is the putative other natural parent.

As used in that definition, “person living as a spouse” means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.<sup>10</sup>

### **Weapons disability and court-ordered firearms transfer**

The bill requires a court that issues a specified type of protection order or in which a person is convicted of a specified offense to determine whether, as a result of the order or offense, the person against whom the order is issued or the offender is prohibited from possessing or purchasing firearms under state or federal law. The requirement applies to a person against whom a temporary protection order is issued under R.C. 2919.26 (see **“Temporary criminal protection orders – family or household member victim,”** below), a person against whom a civil protection order is issued under R.C. 3113.31 (see **“Civil protection orders – family, household member, or dating partner,”** below), and a person convicted of assault or domestic violence.

If the court determines that the person against whom the order is issued or the offender is prohibited from possessing or purchasing firearms, it must order the person to transfer all firearms in the person’s possession or control to a law enforcement agency (the State Highway Patrol, or a municipal police department or sheriff’s officer under the court’s jurisdiction) or federally licensed firearms dealer.<sup>11</sup> The bill establishes procedures, all of which are described below, for the transfer of firearms and for the return or other disposition of transferred firearms.

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<sup>9</sup> R.C. 2929.13(F)(17).

<sup>10</sup> R.C. 2919.25(F), redesignated by the bill as division (J).

<sup>11</sup> R.C. 2903.13(D), 2919.25(I), 2919.26(G)(2), and 3113.31(F)(2); also R.C. 2923.133(D) and 2923.134(C).

## Weapons disability

The bill expands the list of persons prohibited under the weapons disability law from knowingly acquiring, having, carrying, or using a firearm or dangerous ordnance to include all of the following:<sup>12</sup>

1. Any person convicted of the offense of domestic violence or the offense of assault when the victim is a family or household member, whether classified as a felony or misdemeanor;
2. Any person who is subject to a court order, granted after a full hearing for which the person received notice and an opportunity to be heard, that restrains the person from harassing, stalking, threatening, or engaging in other conduct that would place a family or household member or person with whom the respondent is or was in a dating relationship in reasonable fear of bodily injury, or is subject to a temporary criminal protection order in a criminal action of a type described below in **“Temporary criminal protection orders – family or household member victim.”**

A violation of the prohibition is the offense of “having weapons while under disability,” a third degree felony.

Existing law prohibits various individuals, including all of the following, from knowingly acquiring, having, carrying, or using any firearm or dangerous ordnance:

1. Fugitives from justice;
2. Persons convicted of, indicted for, or found to be delinquent for committing a specified offense;
3. Persons with specified drug or alcohol issues;
4. Persons with specified mental health issues.

Under continuing law, persons who would otherwise be prohibited may be relieved from the disability under operation of law or legal process.<sup>13</sup>

## Statutory relief from weapons disability

Existing law provides that a person who is prohibited from acquiring, having, carrying, or using firearms may apply to a court of common pleas of the county in which the person resides for relief from the disability. The provision does not apply to a person who has been convicted of unlawful use of a weapon by a violent career criminal or who has been convicted two or more times of a felony and a firearms specification. Upon hearing, the court may grant the applicant relief if it makes specified determinations. Relief from disability restores the applicant to all civil firearm rights to the full extent enjoyed by any citizen, subject to specified conditions. One of the conditions is that the relief is automatically void upon the applicant’s commission of

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<sup>12</sup> R.C. 2923.13(A)(6) and (7) and (D).

<sup>13</sup> R.C. 2923.13.

any of the offenses, or becoming one of the class of persons, that currently result in the application to the person of the firearms disability, as described above.<sup>14</sup>

The bill expands the provision that automatically voids relief from firearms disability so that it also includes the offenses and classes of persons that the bill adds to the disability provision. Under the bill, in addition to the offenses and classes of persons specified under existing law, the relief from firearms disability also is automatically terminated upon the occurrence of either of the following:<sup>15</sup>

1. The person's commission of domestic violence or assault when the victim is a family or household member;
2. The person's becoming subject to a court order, granted after a full hearing for which the person received notice and an opportunity to be heard, that restrains the person from harassing, stalking, threatening, or engaging in other conduct that would place a family or household member in reasonable fear of bodily injury, or becoming subject to a temporary criminal protection order in a criminal action of a type described below in **"Temporary criminal protection orders – family or household member victim."**

## **Protection orders – background**

### **Temporary criminal protection orders – family or household member victim**

Under existing law, an alleged victim of any of the following offenses may file a motion for a temporary protection order as a pretrial condition of release of the alleged offender if the victim was a family or household member of the offender at the time of the offense:

1. Criminal damaging or endangering;
2. Criminal mischief;
3. Burglary;
4. Aggravated trespass;
5. A violation of a municipal ordinance substantially similar to any of the above crimes;
6. An offense of violence;
7. A sexually oriented offense.

The motion also may be filed by the complainant or a family or household member of the victim and a court may issue an order on its own motion. In emergencies in which the victim is unable to file a motion, a person who arrested the alleged offender may file on behalf of the victim. The law provides procedures that govern consideration of an application and

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<sup>14</sup> R.C. 2923.14.

<sup>15</sup> R.C. 2923.14(F)(4).

issuance of an order. If the court issues an order, the order may contain only the terms authorized by statute.<sup>16</sup>

### **Civil protection orders – family, household member, or dating partner**

Existing law authorizes a person on the person's own behalf or, if a parent or adult, on behalf of any other family or household member to petition a court for a civil protection order against someone the petitioner alleges has engaged in domestic violence against a family or household member or person with whom the respondent is or was in a dating relationship.

In this context, "domestic violence" means, if the victim is a family member, household member, or person with whom the respondent is or was in a dating relationship, any of the following:

1. Attempting to cause or recklessly causing bodily injury;
2. Placing another person by the threat of force in fear of imminent serious physical harm;
3. Committing menacing by stalking or aggravated trespass;
4. Committing any act with respect to a child that would result in the child being an abused child;
5. Committing a sexually oriented offense.

The law provides procedures that govern the consideration of a petition and the issuance of an order, which in certain circumstances may include an ex parte order that must be followed by a full hearing. The law specifies the possible content of an order.<sup>17</sup>

### **Court order to transfer firearms and warning**

The bill allows a person who moves for a temporary protection order in a criminal case or petitions for a civil protection order under either of the protection order provisions described above to attach to the motion or petition a document that describes the number, types, and locations of any firearms that the person knows to be in the possession or control of the defendant or respondent.<sup>18</sup>

If a person is convicted of assault or domestic violence or a court issues a temporary protection order or civil protection order under either of the protection order provisions described above, the bill requires the convicting or issuing court to determine whether, as a result of the order, it is unlawful for the defendant or respondent to possess or purchase a firearm under state or federal law. If the court determines that the defendant or respondent is prohibited from possessing or purchasing a firearm, the court must order the defendant or respondent to transfer all firearms and ensure that the transfer is made.<sup>19</sup>

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<sup>16</sup> R.C. 2919.26.

<sup>17</sup> R.C. 3113.31.

<sup>18</sup> R.C. 2919.26(B)(2) and 3113.31(C)(2).

<sup>19</sup> R.C. 2903.13(D), 2919.25(I), 2919.26(G)(2), and 3113.31(F)(2).



If a court issues a civil protection order, accompanying the order, the court must provide the parties to the order with written notice that states the respondent's firearms-related obligations under the bill. Alternatively, if the court issues a temporary protection order, the bill allows for the court to provide the notice orally or by form (stating the defendant's firearms-related obligations). Current law for civil and temporary protection orders requires notice, given orally or by form, that "[a]s a result of this protection order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8) for the duration of this order. If you have any questions whether this law makes it illegal for you to possess or purchase a firearm or ammunition, you should consult an attorney." Under the bill, if the court determines that the defendant or respondent is prohibited from possessing or purchasing a firearm, the notice must contain the following language:<sup>20</sup>

As a result of this protection order, it is unlawful for you, the defendant (or respondent, as applicable) to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to section 2923.13 of the Revised Code or 18 U.S.C. 922(g)(8) for the duration of this order. You are required to transfer all firearms in your possession or control within twenty-four hours after service of this order in accordance with section 2923.134 of the Revised Code. You are required to file with this court a proof of transfer and an affidavit that you possess no firearms within forty-eight hours after service of this order.

## Procedure for transfer of firearms

### Following issuance of a protection order

#### Transfer

Under the bill, when a court order is granted after a full hearing for which the respondent received notice and an opportunity to be heard and it restrains the respondent from harassing, stalking, threatening, or engaging in other conduct that would place a family or household member, or a person with whom the respondent is or was in a dating relationship, in reasonable fear of bodily injury or a temporary criminal protection order in a criminal action of a type described above in "**Temporary criminal protection orders – family or household member victim**" is issued and the court determines that, as a result of the order, it is unlawful for the offender to possess or purchase a firearm under specified provisions of state or federal law, the court must order the offender to transfer all firearms in the offender's possession or control.<sup>21</sup>

Within 24 hours after being served with the court order, the "respondent" (in the transfer and disposal provisions, this term includes an offender who is subject to a temporary criminal protection order) must transfer all firearms in the respondent's possession or control to a law enforcement agency or federally licensed firearms dealer. The respondent must

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<sup>20</sup> R.C. 2919.26(G)(2) and 3113.31(F)(2).

<sup>21</sup> R.C. 2923.134(A).

provide a copy of the court order to the agency or dealer at the time of transfer, along with a copy of the protection order. The agency or dealer must then issue a proof of transfer to the respondent. The proof of transfer must include the respondent's name, the date of transfer, and the serial number, make, and model of each transferred firearm.<sup>22</sup>

Within 48 hours after being served with the court order, the respondent must file a copy of the proof of transfer with the court that issued the order with an affidavit that all firearms in the respondent's possession or control at the time the respondent was served with the order have been transferred and that the respondent currently has no firearms in their possession or control. If the respondent did not have any firearms to transfer, the respondent must file an affidavit that at the time the respondent was served with the order the respondent had no firearms in the respondent's possession or control and that the respondent currently has no firearms.<sup>23</sup>

### **Storage and disposal**

When the order expires, the law enforcement agency or federally licensed firearms dealer that has custody of the respondent's firearms must return them upon request unless the order is extended, another similar order prohibits the respondent from possessing a firearm, or the respondent is prohibited from possessing a firearm under state or federal law. Before returning a firearm, the agency or dealer may require the respondent to sign a statement that the court order has expired and has not been extended and that the respondent is not prohibited from possessing a firearm under state or federal law.<sup>24</sup>

If the respondent is prohibited from possessing a firearm under state or federal law, the respondent may make one sale of any of the respondent's firearms that are in a law enforcement agency's custody to a federally licensed firearms dealer within 60 days after the expiration of the court order and any extensions to the order. If the dealer presents the agency with a bill of sale indicating that the respondent has sold the firearms to the dealer, the agency must transfer possession of those firearms to the dealer. If the agency accepts any proceeds from the sale on behalf of the respondent, the agency must transfer the proceeds of the sale to the respondent.<sup>25</sup>

If the respondent or a federally licensed firearms dealer does not provide a copy of a bill of sale to the law enforcement agency within 60 days after the expiration of the court order and any extensions to the order, the firearms will be considered abandoned. The agency may establish policies for the disposal of abandoned firearms, provided the policies require that the respondent be notified of the disposal and receive any financial value from the disposal of the firearms.<sup>26</sup>

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<sup>22</sup> R.C. 2923.134(A)(1).

<sup>23</sup> R.C. 2923.134(A)(2).

<sup>24</sup> R.C. 2923.134(A)(3).

<sup>25</sup> R.C. 2923.134(A)(4)(a).

<sup>26</sup> R.C. 2923.134(A)(4)(b).

The bill permits a law enforcement agency or federally licensed firearms dealer to charge the respondent a reasonable fee for the storage of any transferred firearm under these provisions. However, the fee charged by an agency may not exceed the costs associated with taking possession of, storing, and disposing of the firearms.<sup>27</sup>

## **Following conviction**

### **Transfer**

Under the bill, if a person is convicted of domestic violence or assault when the victim is a family or household member, and the court determines that, as a result of the offense, it is unlawful for the offender to possess or purchase a firearm under specified provisions of state or federal law, the court must order the offender to transfer all firearms in the offender's possession or control.<sup>28</sup>

Within 24 hours after the offender is served with the court order, the offender must transfer all firearms in the offender's possession or control to a law enforcement agency or federally licensed firearms dealer. The offender must provide a copy of the court order to the agency or dealer at the time of transfer. Prior to accepting a transfer of firearms, a law enforcement agency must notify the offender that if the firearms are transferred to such an agency the firearms will be considered abandoned and are subject to disposal according to a disposal policy the agency may adopt, as described below. The agency or dealer must then issue a proof of transfer to the offender. The proof of transfer must include the offender's name, the date of transfer, and the serial number, make, and model of each transferred firearm.<sup>29</sup>

Within 48 hours after being served with the court order, the offender must file a copy of the proof of transfer with the court that issued the order with an affidavit that all firearms in the offender's possession or control at the time the offender was served with the order have been transferred and that the offender currently has no firearms in the offender's possession or control. If the offender did not have any firearms to transfer, the offender must file an affidavit that at the time the offender was served with the order the offender had no firearms in the offender's possession or control and that the offender currently has no firearms.<sup>30</sup>

Notwithstanding the requirements described in the two preceding paragraphs, if the offender is incarcerated at the time the offender is served with the court order and is unable to comply with the order due to the offender's incarceration, the offender may file an affidavit with the court that those circumstances are applicable to the offender.<sup>31</sup>

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<sup>27</sup> R.C. 2923.134(A)(5).

<sup>28</sup> R.C. 2903.13(D) and 2919.25(I); and R.C. 2923.133(A) by reference to R.C. 2923.13(A)(6).

<sup>29</sup> R.C. 2923.133(A)(1).

<sup>30</sup> R.C. 2923.133(A)(2).

<sup>31</sup> R.C. 2923.133(B).

## Disposal

If the offender transfers the firearms to a law enforcement agency, the firearms will be considered abandoned. The bill permits law enforcement agencies to establish policies for the disposal of abandoned firearms, provided the policies require that the offender be notified of the disposal and receive any financial value from the disposal less the costs to the agency associated with taking possession of, storing, and disposing of the firearms.<sup>32</sup>

## Penalty for failure to transfer firearms

The bill makes it a fifth degree felony for a respondent or offender to recklessly violate the requirements for transferring firearms described in the sections above.<sup>33</sup>

## LEADS entry for domestic violence warrants

The bill requires any law enforcement agency in possession of an outstanding arrest warrant or summons that charges domestic violence to enter the following information about the warrant or summons into the law enforcement automated data system, also known as LEADS:

1. The details of the warrant or summons, including the name of the defendant, or, if that is unknown, any name or description by which the defendant can be identified with reasonable certainty;
2. Any known address of the defendant;
3. The name of the court that issued the warrant or summons and the date of its issuance.

If any other law enforcement agency with knowledge of the arrest warrant or summons finds that the required information is not entered into LEADS, that law enforcement agency must enter the information into the system.<sup>34</sup>

## Domestic violence program

The bill also transfers \$500,000 from the General Revenue Fund to the Domestic Violence Program Fund to provide funding to domestic violence programs under existing program requirements, as administered by the Attorney General.<sup>35</sup>

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## History

Action	Date
Introduced	02-12-19

S0043-I-133/ar

<sup>32</sup> R.C. 2923.133(A)(3).

<sup>33</sup> R.C. 2923.133(C) and 2923.134(B).

<sup>34</sup> R.C. 2935.082.

<sup>35</sup> Section 3 and 4 and R.C. 109.46, not in the bill.