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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Office

H.B. 3
(1_133_0147-8)
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 3's Bill Analysis](#)

Version: In House Criminal Justice

Primary Sponsors: Reps. Boyd and Carruthers

Local Impact Statement Procedure Required: Yes

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Highlights

- Local law enforcement agencies could incur up to an estimated \$1.5 million annually statewide to provide additional domestic violence training. Costs to dedicate staff time and expenses to domestic violence high risk teams will be minimal at most.
- Courts of common pleas will see increased operating expenses to meet the bill's requirement to have a judge or magistrate available to receive petitions for protection orders 24 hours per day, seven days per week. The magnitude of this cost increase is unknown.
- In the trial phase of certain aggravated murder cases and death penalty eligible aggravated murder cases, county criminal justice systems (prosecutors, indigent defense counsel, and courts of common pleas) will experience a potentially significant increase in costs and workload.
- The expansion of the domestic violence offense has the potential to shift a significant number of misdemeanor domestic violence cases, and the related processing and sanctioning costs, from municipal to the felony jurisdiction of county criminal justice systems. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain. Also uncertain is the amount of related annual revenue (court costs and fees, and fines) that will shift.
- The Office of the State Public Defender may incur additional expenditures in order to reimburse counties for the provision of legal representation to indigent defendants in death penalty cases.
- The bill's aggravated murder provision may increase the size of the state's prison population. Any resulting increase in the Department of Rehabilitation and Correction's

GRF-funded incarceration expenditures is likely to be less an estimated \$600,000 annually realized roughly 25 years after the bill's effective date.

- The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars annually, as the likely number of felony offenders affected by the bill's strangulation provision appears to be quite large.
- There is likely to be a no more than minimal annual revenue gain in locally collected state court costs credited to the state's Victims of Crime/Reparations Fund (Fund 4020) and the Indigent Defense Support Fund (Fund 5DY0).

Detailed Analysis

Aggravated murder

The bill expands the offense of "aggravated murder" to include murders in which the victim was a family or household member of the offender and the offender has previously been convicted of domestic violence or an offense of violence against a family or household member and makes such an offender eligible to receive the death penalty. The bill also expands the list of aggravating circumstances that may result in imposition of the death penalty to include instances in which: (1) the victim of the offense was a family or household member of the offender, and (2) the offender had previously been convicted of domestic violence or an offense of violence against the victim.

Trial

The county is responsible for trying and sentencing defendants in aggravated murder cases regardless of whether there is a death specification. This includes both the costs for the prosecution and defense counsel, as many defendants in murder cases are indigent. Any aggravated murder trial, regardless of the presence of a death specification, will likely incur costs for expert witness consultation and testimony, psychologists, and investigators. Those costs are not likely to differ significantly based solely on the presence or absence of a death specification, however, death penalty cases are bifurcated, meaning there are two phases: a guilt phase and a penalty phase. As such, many of the costs incurred in the guilt phase tend to be duplicated in the penalty phase, thereby significantly increasing the overall costs to try a death penalty case. Other costs, such as jury compensation, defense mitigation and prosecution experts, the number of defense attorneys required, and defense counsel compensation vary by case and by county.

A mix of quantitative and qualitative studies of other states have found that the cost of a case in which the death penalty has been sought and imposed is higher than a murder case in which life imprisonment has been imposed. These studies generally support the following conclusions:

- In some states, capital cases exceed the cost of life imprisonment cases in the range of up to between \$1 million and \$3 million per case.
- The total amount expended in a capital case is between two and a half and five times as much as a noncapital case.

These provisions likely mean an increase in workload on certain aggravated murder and death penalty eligible aggravated murder cases. Additional costs may be incurred by both the prosecution and defense, and for the Office of the State Public Defender to reimburse counties for all or a portion of their costs incurred in the provision of legal representation to indigent defendants in death penalty cases.

Incarceration expenditures

The average time served for an offender sentenced to prison for the offense of aggravated murder is 31.76 years, 7.3 years longer than an offender sentenced for murder, for which the average time served is 24.46 years.¹ The net impact of the provision on the Department of Rehabilitation and Correction is that some number of offenders currently committed to the Department for murder will instead be committed for aggravated murder and likely sentenced for a longer term. From 2014 to 2018, the average number of offenders committed to the Department for murder annually was 113 out of a total inmate population of around 49,000.

The marginal annual cost for a small number of additional bed years is about \$3,500 per bed. If 25 offenders under the terms of the bill were convicted of aggravated murder rather than murder, the maximum annual increase in cost to the Department would be around \$612,500 (25 offenders x 7 additional years x \$3,500). This increase would come after the time that would have been served for a murder charge under current law, or approximately at least 25 years after the bill's effective date.

This cost increase will be offset somewhat by offenders being sentenced to death. The average stay on death row is just over 17 years, while the average length of stay for aggravated murder, as referenced above, is roughly 32 years.

Strangulation

The bill expands the offense of domestic violence to include impeding the normal breathing or blood circulation of another person by applying pressure to the throat or neck. The penalty for such a domestic violence offense, under the bill, generally is a third degree felony, and increases to a second degree felony if the offender has a prior conviction for domestic violence or for two or more offenses of violence. At either charging level, the bill requires a mandatory prison term within the sentencing range as specified under current law.

The expansion of the offense of domestic violence as specified in the bill is likely to have a significant impact on the criminal justice system. Under current law, it appears that most domestic violence violations are charged as a misdemeanor. Under some circumstances (causing or attempting to cause physical harm), if the offender previously had been convicted of domestic violence or certain related offenses, they can be charged with a fourth or third degree felony, or, absent this specification, a fifth degree felony when the victim is a pregnant woman.

¹ Average Time Served Among Ohio Prison Releases, Calendar Year 2016, report by the Department of Rehabilitation and Correction.

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In 2017, law enforcement responded to 37,725 incidents of domestic violence in which charges were filed. In 2016, that number was 38,740. Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that, in 2018, approximately 20% of their estimated 3,200 domestic violence cases involved allegations of strangulation or suffocation. Extrapolating this number across the state suggests that thousands of misdemeanor domestic violence cases involving strangulation or suffocation could instead be charged as a third degree felony. In some cases, a felony charge may induce some offenders to accept a plea bargain, but this does not alter the reality that thousands of cases could shift from municipal and county courts that currently handle domestic violence misdemeanor cases to common pleas courts that have jurisdiction over felonious strangulation or suffocation cases.

State fiscal effects

Incarceration expenditures

Under current law and sentencing practices, around 700 offenders per year enter prison for felony domestic violence offenses of the fifth, fourth, or third degree. The bill will shift some felony domestic violence cases to a felony of the third or second degree as well as a potentially large number of the misdemeanor domestic violence cases involving strangulation or suffocation to a felony of the third degree. Given the requirement that a prison sentence be imposed, this could result in a large number of additional offenders entering prison as well as offenders being sentenced for longer terms than they otherwise would have received under current law. The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction may increase by hundreds of thousands of dollars or more annually, as the potential number of offenders affected by the bill each year appears to be quite large. For FY 2018, the average annual cost of incarcerating an offender in prison was \$27,835.

Court cost revenues

When a person is convicted of, or pleads guilty to, a criminal offense, the sentencing court generally is required to impose upon that person state court costs in addition to any other applicable fines, fees, and costs. The domestic violence offense in the bill will largely function as a penalty enhancement, as certain misdemeanor domestic violence offenses involving allegations of strangulation or suffocation can instead be charged as a third degree felony. A conviction in this situation creates the possibility of increased state revenues from the \$60 in court costs imposed for a felony conviction, an amount that is \$31 more than the \$29 in court costs imposed for a misdemeanor conviction. The amount collected annually is likely to be minimal at most because many felony offenders are either financially unable or unwilling to pay. The state court costs are apportioned between the Indigent Defense Support Fund (Fund 5DY0) and the Victims of Crime/Reparations Fund (Fund 4020).

Local criminal justice system fiscal effects

The expanded domestic violence offense in the bill carries the potential to shift a significant number of domestic violence criminal cases that, based on current law, would most likely be adjudicated as misdemeanors under the subject matter jurisdiction of a municipal court or county court to a felony level charge under the subject matter jurisdiction of a

common pleas court. Relative to a misdemeanor, a felony is generally a more expensive criminal matter in terms of the costs to process the case and sanction the offender.

From the fiscal perspective of local governments, such an outcome will simultaneously increase county criminal justice system expenditures related to investigating, prosecuting, adjudicating, and defending (if the offender is indigent) additional felony domestic violence offenders, while decreasing the analogous municipal and county court criminal justice system expenditures related to the prosecution of that subset of misdemeanor domestic violence offenses involving strangulation or suffocation. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain.

Fines, fees, and court costs

For persons convicted of, or pleading guilty to, a felony, the sentencing court generally is required and/or permitted to impose a fine, fees, and court costs that are retained locally for various purposes. A waiver of payment is permitted if the person is determined to be indigent.

The bill will affect the local revenue collected from strangulation or suffocation cases as follows:

- The elevation of a misdemeanor to a felony means that revenue from local fines, fees, and court costs collected by municipal and county courts will instead be collected by courts of common pleas. The maximum fine for a misdemeanor is \$1,000 (first degree misdemeanor). The fines for felonies generally start at up to \$2,500 (fifth degree felony);
- The enhancement of an existing felony offense creates the possibility of increased fine revenues. The maximum permissible fines for fifth, fourth, or third degree felonies are \$2,500, \$5,000, and \$10,000, respectively. The maximum permissible fine for a felony of the third or second degree is \$10,000 and \$15,000, respectively.

The likely revenue loss for municipal criminal justice systems and revenue gain for county criminal justice systems, while potentially significant, is difficult to calculate precisely because many offenders, especially those convicted of a felony, are either financially unable or unwilling to pay. It is also the case that the court rarely imposes the maximum permissible fine.

Domestic violence protection orders

The bill: (1) allows a peace officer to file a motion for an emergency protection order with the court at the request of the victim of a domestic violence offense, (2) expands the definition of "family or household member" to include a child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the respondent for the purpose of petitioning a court for a protection order, and (3) requires any court that issues domestic violence protection orders to have a judge or magistrate available to accept a petition 24 hours a day, seven days a week.

The number of petitioners for civil protection orders is likely to increase to some degree because of the bill. This is because some individuals who are not eligible to petition for a domestic violence protection order under current law will meet the bill's requirements permitting them to do so. The number of additional new filings that may be created by the bill is unknown, but is not expected to create a substantial amount of work for the courts. To the

degree that any costs can be quantified, they are likely to be minimal, mostly in terms of the additional time and effort that existing court personnel take to process filings and orders.

The greater potential expense to the courts is likely to result from the requirement for a judge or magistrate to be available to accept petitions at times that they are not required to be available under current law. Under current practice, a judicial official may be needed outside of normal business hours to issue a search warrant or an emergency order to remove a child from a home. Unlike a protection order, these examples are initiated by either a law enforcement or child services agency. In these examples, the process is often informal and varies from county to county. The manner in which a court of common pleas will comply is unclear, but could range from methods as described generally above to staffed office hours around the clock.

Referral to domestic violence services

The bill requires each agency, instrumentality, or political subdivision that is served by any peace officer who has arrest authority for violations of state or local law, to identify local and regional domestic violence advocacy services to which individuals experiencing domestic violence or violation of a protection order and determined to be high risk may be referred, and, if no appropriate local or regional services exist, allows the agency to create a domestic violence high risk team (DVHRT) to include at least one peace officer, probation officer, or parole officer, at least one person who represents a community advocacy group, and any other person whom the chief law enforcement officer deems necessary. The cost for an agency to identify services for referral will be minimal at most. Costs for an agency that creates a DVHRT will depend on the number of officer hours dedicated to the team, but are likely to be minimal for each agency. It is expected that each agency can accommodate the increase in expenses utilizing existing staff and resources.

Law enforcement training

The bill requires the Attorney General to adopt rules: (1) requiring every peace officer and trooper who handles complaints of domestic violence to complete annual professional training on intervention techniques in domestic violence cases, the use of a lethality assessment screening tool, and referral of high risk victims to a DVHRT or to a domestic violence advocacy service, and (2) allowing the Ohio Peace Officer Training Commission to use federal funds to pay for this training.

The Ohio Peace Officer Training Academy's current course catalog includes various onsite trainings in the category of human relations. These trainings are typically either four or eight-hour courses, costing between \$50 and \$115 with an average hourly rate of \$14.

If ongoing lethality assessment training is included in an agency's current and continuing professional training requirements, there would be no additional cost for training. If the training is to be completed in addition to current practices, an estimated \$479,276 would be required statewide to provide one hour of training for each of the 34,234 peace officers in the state (34,234 x \$14) plus an additional \$975,669 in officer wages for that hour (Bureau of Labor Statistics 2017 average officer hourly wage of \$28.50 x 34,234).

No-drop policies

The bill encourages prosecuting attorneys to employ no-drop policies in an effort to curb instances of domestic violence, but does not require the adoption of such policies. As

such, this provision has no direct fiscal effect on the state and political subdivisions. No-drop policies rely on a presumption against seeking voluntary dismissal or a formal entry dropping charges in a case related to an incident of domestic violence.

Evidence in domestic violence actions

The bill makes changes to procedures in criminal proceedings involving domestic violence and civil actions to recover damages based on an injury to a person based on a criminal act of domestic violence.² According to the LSC bill analysis, to the extent that statutes in the bill conflict with Ohio's Rules of Evidence, they have no effect. If the provisions do have an effect on criminal and civil justice systems, the fiscal implications on investigation, prosecution, and sentencing are unknown.

Synopsis of Fiscal Effect Changes

From a fiscal perspective, there are five substantive differences (summarized below) between the As Introduced version of the bill and this substitute version (I_133_0147-8).

- **Aggravated murder.** The substitute bill limits the circumstances under the As Introduced bill through which a previous conviction of domestic violence or violence against a family member is an aggravating circumstance for determining death sentence eligibility. The substitute bill specifies that the aggravated murder victim must have been the victim of the prior offense of domestic violence and only applies if the victim had not previously physically harmed, sexually assaulted, or threatened the offender with imminent physical harm, serious physical harm, or sexual violence. This will lessen, to some degree, the fiscal effect county criminal justice systems (prosecutors, indigent defense counsel, and courts of common pleas) will experience as compared to the As Introduced version of the bill; however, it is likely to remain potentially significant.
- **Strangulation.** The substitute bill expands the offense of domestic violence to include strangulation. The penalty for such a domestic violence offense, under the bill, generally is a third degree felony, and increases to a second degree felony if the offender has a prior conviction for domestic violence or for two or more offenses of violence. This has the potential to shift a significant number of misdemeanor domestic violence cases, and the related processing and sanctioning costs, from municipal and county courts to common pleas courts. The annual magnitude of the potential expenditure savings and expenditure increases for municipal and county criminal justice systems, respectively, is uncertain. Convictions for the felony domestic violence offense could reduce fine, fee, and court cost revenues collected for misdemeanors by municipal and county courts and increase those amounts collected by common pleas courts.
- **Victim referral.** The As Introduced version of the bill required each agency, instrumentality, or political subdivision that is served by any peace officer who has arrest authority for violations of state or local law create a domestic violence high risk team (DVHRT) for handling alleged incidents of domestic violence and alleged incidents of violating a protection order whose victims are determined to be high risk. The

² For a thorough explanation of these changes, see LSC's bill analysis for H.B. 3.

substitute bill requires, instead, that each agency, instrumentality, or political subdivision identify local and regional domestic violence advocacy services to which individuals experiencing domestic violence or violation of a protection order and determined to be high risk may be referred. Statewide costs for the operation of these teams were estimated to be up to \$3 million annually. Under the substitute bill, it is expected that each agency can accommodate the increase in expenses related to identifying services for referral, and in some cases creating a DVHRT, utilizing existing staff and resources.

- **Emergency protection orders.** The substitute bill allows a peace officer responding to an incident of domestic violence to file a motion for an emergency protection order with the court at the request of the victim of the offense, and requires the court to be available to accept a petition for the emergency protection order and to hold an ex parte hearing 24 hours a day and seven days a week. The requirement for court availability matches requirements in the As Introduced version of the bill for domestic violence protection orders. The fiscal effect on the court will generally be the same for the courts, but the emergency protection order provision in the substitute bill is likely to increase the number of protection orders sought and issued.
- **Child endangering.** Under the As Introduced bill, a person who committed domestic violence, in violation of existing law, where one or more children under 18 years old was present, was also guilty of endangering children. The likely effect of this provision generally would not have been to create new criminal cases, but to add to the number of charges for which an alleged domestic violence offender may have been prosecuted, convicted, and sanctioned. This would have increased to some degree the time and effort that county and municipal criminal justice systems expend to process certain domestic violence cases. This likely could have been absorbed utilizing existing staff and resources. The substitute bill removes this provision.