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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 3
133rd General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Boyd and Carruthers

Dennis M. Papp, Attorney

SUMMARY

- Expands the offense of “aggravated murder” to also prohibit purposely causing the death of another when 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 that resulted in serious physical harm against that family or household member.
- Expands the offense of “domestic violence” to also prohibit recklessly impeding the normal breathing or blood circulation of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth, of the family or household member.
- Requires a court setting bail in a criminal case or determining a felony or misdemeanor sentence to consider the results of any lethality assessment screening conducted in the case by law enforcement if any such results are available, as required under the bill.
- Expands the definition of “family or household member” for the purpose of petitioning for a domestic violence civil protection order, juvenile court protection order, or anti-stalking civil protection order to include a child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the respondent and who is residing with or has resided with the respondent.
- Creates a new type of protection order described as an “emergency protection order” that may be obtained by a law enforcement officer, on behalf of and with the consent of a victim of domestic violence, at any time when the court is not available for regular business.
- Requires each agency, instrumentality, and political subdivision 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
- Adopt written policies and procedures for the peace officers to follow in screening alleged incidents of domestic violence and alleged incidents of violating a protection order for referral to local or regional domestic violence advocacy services.
- Expands the types of domestic violence-related training that must be included in peace officer biennial professional training.
- Requires the Attorney General to adopt rules to require that peace officer basic training include training on evidence-based lethality assessment screening tools.
- Creates the Domestic Violence Prosecution Study Committee.
- Encourages prosecuting attorneys, in domestic violence-related cases, to consider the totality of the circumstances, review all evidence in the case, and resist seeking voluntary dismissal or no contest based solely on the victim’s wishes, unless justice demands otherwise.
- Requests the Supreme Court to review the Ohio Evidence Rules to consider how the Rules may better aid victims of domestic violence without diminishing the fundamental fairness to alleged perpetrators of domestic violence.
- Names the bill “Aisha’s Law.”
- Makes an appropriation.

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DETAILED ANALYSIS

Aisha’s Law

The bill is entitled “Aisha’s Law.”¹

Aggravated murder

New offense circumstances

The bill expands the offense of “aggravated murder” to also prohibit, in addition to the currently prohibited conduct, purposely causing the death of another under certain domestic violence circumstances. Under the bill’s new prohibition, a person commits aggravated murder if the person purposely causes the death of another when the victim was a family or household member of the offender, and the offender has previously been convicted of domestic violence resulting in serious physical harm or an offense of violence resulting in serious physical harm against that family or household member. Under existing law, unchanged by the bill, aggravated murder is punishable by a sentence of death or life imprisonment, determined under special sentencing provisions described below in “**Background – capital sentencing law**.”² The bill does not change any of the current prohibitions under the offense of aggravated murder.

¹ Section 5.

² R.C. 2903.01(G).

For purposes of the expanded aggravated murder offense:³

- **“Family or household member”** means:
 1. Any of the following who is residing with or has resided with the offender:
 - a. A spouse, person living as a spouse, or former spouse of the offender;⁴
 - b. A parent, a foster parent, or a child of the respondent, or another person related by consanguinity or affinity to the offender;
 - c. A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender;
 - d. A child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the offender.
 2. The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.
- **“Person living as a spouse”** means a person who is living or has lived with the offender in a common law 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 occurrence of the act in question;
- A **“child”** is a person under 18 years old;
- A **“custodian”** is an individual with legal custody of a child; and
- A **“guardian”** is an individual granted authority by a probate court to exercise parental rights over a child to the extent provided in the court’s order and subject to the residual parental rights, privileges, and responsibilities of the child’s parents.

Background – capital sentencing law

Under existing law, unchanged by the bill, the only situations in which a person may face a sentence of death are when the person is convicted of the offense of “aggravated murder,” or the offense of “terrorism” when the most serious offense comprising the terrorism is aggravated murder, and of a specification of an “aggravating circumstance.”⁵ If a person is convicted of the offense but no aggravating circumstance specification, the court must sentence the person to life imprisonment with parole eligibility after serving 20 years of imprisonment or a special type of sentence of life imprisonment under the Sexually Violent

³ R.C. 2903.01(I)(5), (6), and (7), by reference to R.C. 3109.51, not in the bill and 3113.31.

⁴ References to “respondent” in the definition result from the definition’s location within another statute and should probably be to “defendant” to reflect the criminal nature of the proceedings.

⁵ R.C. 2929.02 and 2909.24, not in the bill.

Predator Law.⁶ If a person is convicted of the offense and one or more aggravating circumstance specifications, the trial jury and trial judge or, if the person was not tried by a jury, the three-judge panel that tried the case conducts a sentencing hearing to determine the sentence to impose on the person. If the person was tried by a jury, the person may be sentenced to death only if the trial jury determines at the hearing in accordance with specified procedures that the aggravating circumstances the person was convicted of committing outweigh all mitigating factors in the case and recommends a sentence of death and the trial judge makes the same determination at a separate hearing. If the trial jury does not make that determination and recommend a sentence of death, the trial judge may not impose a sentence of death. If the person was tried by a three-judge panel, the person may be sentenced to death only if the panel determines at the hearing in accordance with specified procedures that the aggravating circumstances the person was convicted of committing outweigh all mitigating factors in the case. If the trial jury and trial judge, or the three-judge panel, does not sentence the person to death, it must sentence the person to life imprisonment without parole, life imprisonment with parole eligibility after serving 30 full years of imprisonment, life imprisonment with parole eligibility after serving 25 full years of imprisonment, or a special type of sentence of life imprisonment under the Sexually Violent Predator Law.⁷

Domestic violence – strangulation or suffocation

The bill expands the offense of “domestic violence” to also prohibit, in addition to the currently prohibited conduct, recklessly impeding the normal breathing or blood circulation of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth, of the family or household member.⁸ Violation of this new domestic violence prohibition generally is a third degree felony, but becomes a second degree felony if the offender previously was convicted of the offense of domestic violence or of two or more “offenses of violence.”⁹ Existing law, unchanged by the bill, defines the term “family or household member” for purposes of the offense,¹⁰ and also defines the term “offense of violence” for purposes of the Revised Code.¹¹

It is not required in a prosecution under the bill’s strangulation or suffocation prohibition to allege or prove that the family or household member who is the victim suffered physical harm or serious physical harm or visible injury or that there was an intent to kill or protractedly injure the family or household member.¹²

⁶ R.C. 2929.022(B).

⁷ R.C. 2929.02, 2929.03, and 2929.04, not in the bill.

⁸ R.C. 2919.25(D) with conforming changes in 2929.13(F)(17) and 2929.14(A).

⁹ R.C. 2919.25(E)(6) and (7).

¹⁰ R.C. 2919.25(J).

¹¹ R.C. 2901.01, not in the bill.

¹² R.C. 2919.25(G).

It is an affirmative defense to a charge of domestic violence under the bill's strangulation or suffocation prohibition that the act was done to the family or household member as part of a medical or other procedure undertaken to aid or benefit the victim.¹³

While the bill specifies that prosecution for domestic violence and any other offense is not precluded for conduct prohibited under the offenses, it stipulates that if an offender is convicted of or pleads guilty to domestic violence and also is convicted of or pleads guilty to felonious assault, aggravated assault, or assault based on the same conduct involving the same victim that was the basis of the domestic violence violation, the two offenses are allied offenses of similar import, subject to merger under existing law so that the person may be sentenced for only one of the offenses.¹⁴

Setting bail and sentencing in criminal cases

Existing statutory provisions address the setting of bail in criminal cases¹⁵ (other bail-related provisions are located in Criminal Rule 46) and the procedures to be followed in sentencing a person convicted of a criminal offense.¹⁶ The bill requires a court setting bail in a criminal case or determining a felony or misdemeanor sentence to consider the results of any lethality assessment screening conducted in the case by law enforcement if any such results are available, as required under “**Local law enforcement policies**,” below.¹⁷

Domestic violence civil protection orders

Existing law provides a mechanism for the issuance of a civil protection order against a respondent for the protection of a person who is a family or household member of the respondent or who is a person with whom the respondent is or was in a dating relationship, and against whom the respondent engaged in domestic violence (a currently defined term). A person may seek relief under the mechanism on the person's own behalf, or any parent or adult household member may seek relief under the mechanism on behalf of any other family or household member.¹⁸

Family or household member

The bill expands the definition of “family or household member” that applies under the mechanism to also include, in addition to the persons currently covered under the definition, a child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the respondent and who is residing with or has resided with the respondent. As a result, a

¹³ R.C. 2919.25(H).

¹⁴ R.C. 2919.25(I); see R.C. 2941.25, not in the bill.

¹⁵ R.C. 2937.23.

¹⁶ R.C. 2929.11 to 2929.28, not in the bill except for R.C. 2929.12 to 2929.14 and 2929.22.

¹⁷ R.C. 2937.23(A)(3), 2929.12(G), and 2929.22(B)(1)(h).

¹⁸ R.C. 3113.31.

guardian or custodian of such a child who is a parent or adult household member may petition for a domestic violence civil protection order on behalf of such a child.¹⁹

For purposes of this provision, a child is a person under 18 years old, a custodian is an individual with legal custody of a child, and a guardian is an individual granted authority by a probate court to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights, privileges, and responsibilities of the child's parents.²⁰

Additional information in the petition

The bill also allows the petitioner for a domestic violence civil protection order to include in the petition an allegation that the respondent has previously engaged in domestic violence against a person to be protected or any previous conviction of or plea of guilty to domestic violence by the respondent where the victim was a person to be protected by the order. The court must consider any of that additional information that is included in the petition.²¹

Juvenile court protection orders and civil anti-stalking and sexually oriented offense-related protection orders

Existing law provides a mechanism for the issuance of a protection order by a juvenile court against a juvenile respondent who committed a specified assault, menacing, or stalking offense or a sexually oriented offense against the petitioner or, if the petitioner is a parent or adult family or household member, against any other family or household member, and a separate mechanism for the issuance of a civil protection order against a respondent who committed the offense of "menacing by stalking" or a sexually oriented offense against the petitioner or, if the petitioner is a parent or adult family or household member, against any other family or household member.²² The bill does not directly change those mechanisms, but the definition of the term "family or household member" that it expands, as described above, applies by reference to those mechanisms. As a result, under the bill, a guardian or custodian of a child covered by the expansion who is a parent or adult household member may petition for a protection order on behalf of such a child under the mechanisms.²³

Emergency protection orders

The bill creates a new type of protection order described as an "emergency protection order." A law enforcement officer, on behalf of and with the consent of a victim of domestic violence, is permitted to request an emergency protection order from a "judicial officer" (the

¹⁹ R.C. 3113.31(A)(3)(a)(iv).

²⁰ R.C. 3113.31(A)(10) by reference to R.C. 3109.51, not in the bill.

²¹ R.C. 3113.31(C)(2).

²² R.C. 2151.34 and 2903.214, not in the bill.

²³ R.C. 2151.34 and 2903.214, not in the bill.

bill does not define this term) during any period of time that the court is not open for regular business.²⁴

Form of the request

A request for an emergency protection order under the bill may be made orally or in writing based on the sworn statement of the law enforcement officer and an allegation of either of the following by the person seeking the order:²⁵

- That the victim is in immediate and present danger of domestic violence based on the officer's observations and an allegation of a recent incident of domestic violence;
- That a child of the victim is in immediate and present danger, based on the officer's observations and an allegation of a recent incident of domestic violence.

Issuance of an emergency protection order

If the court finds probable cause, based on a request made as described in "**Form of the request**," above, to believe that the victim or child of a victim is in immediate danger based on an allegation of a recent incident of domestic violence, the court must issue an emergency protection order.²⁶

An emergency protection order may contain any of the following terms:²⁷

- That the alleged domestic violence offender refrain from abusing, threatening, harassing, stalking, or forcing sexual relations on a protected person;
- That the alleged domestic violence offender refrain from entering or interfering with the residence, school, business, place of employment, child care provider, or child day-care center of a protected person;
- That the alleged domestic violence offender refrain from initiating or having any contact with a protected person or the residence, school, business, place of employment, child care provider, or child day-care center of a protected person (contact, in this instance, includes telephone contact; contact by text message, instant message, voice mail, electronic mail, or social networking media and contact by any other means of communication);
- That the alleged domestic violence offender refrain from being within 500 feet of a protected person.

²⁴ R.C. 2919.261.

²⁵ R.C. 2919.261(A).

²⁶ R.C. 2919.261(B).

²⁷ R.C. 2919.261(C) and (F).

Communicating the terms of the order

A court that orders an emergency protection order must communicate the terms of the order by reliable electronic means to an officer of the appropriate law enforcement agency. Upon receiving the order, the law enforcement officer must do all of the following:²⁸

- Provide a copy of the order to each person protected by the order;
- Serve a copy of the order on the alleged domestic violence offender who is subject to the order;
- Enter the order into the law enforcement automated data system (LEADS) so that the order may be entered into the National Crime Information Center’s protection order file.

Expiration of the order

An emergency protection order remains in effect until the earliest of the following:²⁹

- 96 hours after the order was issued;
- 5:00 p.m. of the first day that the court is open for business after the day the order was issued;
- The time at which the court, at the request of the petitioner, terminates the order.

Advising victims of the availability of emergency protection orders

When a peace officer who is authorized to make arrests for a violation of state or local law investigates a report of an alleged incident of the offense of domestic violence or an alleged incident of the offense of violating a protection order, the bill requires that the peace officer advise the victim of the availability of an emergency protection order. Currently, retained by the bill, the peace officer must advise the victim of the availability of a civil domestic violence protection order or a temporary protection order that might be available if specified criminal charges are filed.³⁰

Violating the order

The bill includes a violation of an emergency protection order within the prohibition under the crime of “violating a protection order.” Under the prohibition, as expanded, a person is prohibited from recklessly violating the terms of an emergency protection order, or the terms of any of the existing protection orders currently listed under the prohibition. The existing penalty for the offense, which is a first degree misdemeanor, a fifth degree felony, or a third

²⁸ R.C. 2919.26(D).

²⁹ R.C. 2919.261(E).

³⁰ R.C. 2935.032(C)(2).

degree felony, depending on the circumstances present, applies to a violation of the prohibition involving an emergency protection order.³¹

Procedures for high risk domestic violence victims

Under the bill, within 90 days after the bill's effective date, the chief law enforcement officer of each agency, instrumentality, or political subdivision that is served by any peace officer who has arrest authority for violations of state or local law must 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.³² The bill requires each law enforcement agency, instrumentality, or political subdivision that is served by any such peace officer to adopt written policies, written procedures implementing the policies, and any other necessary written procedures for the peace officers who serve the agency, instrumentality, or political subdivision to follow in screening alleged incidents of the offense of domestic violence and alleged incidents of the offense of violating a protection order for referral to local or regional domestic violence advocacy services. The policies and procedures must include all of the following:³³

- A requirement that peace officers who serve the agency, instrumentality, or political subdivision automatically refer any case of domestic violence that involves an allegation of strangulation to local or regional domestic violence advocacy services and provide the victim with the following warning:
 - “I have a duty to warn you that strangulation is serious and can cause internal injuries, brain damage, and delayed health consequences such as strokes, thyroid issues, miscarriage, and death. Research shows that if you are strangled one time, you are more likely to be killed by your partner. I strongly encourage you to seek immediate medical attention at an emergency department and to ask for support from an advocate”;
- A lethality assessment screening tool, selected by the agency, instrumentality, or political subdivision from those qualified by the Attorney General (AG) under the provisions described in “**Domestic violence training**,” below, to be used by peace officers to screen victims of alleged incidents of domestic violence and alleged incidents of violating a protection order for referral to local or regional domestic violence advocacy services (as used in this provision, “lethality assessment screening tool” means such a tool included in the list of validated and evidence-based lethality assessment screening tools by the AG under the provisions described in “**Domestic violence training**,” below);

³¹ R.C. 2919.27.

³² R.C. 2935.033(B).

³³ R.C. 2935.033(A) and (C).

- Procedures for connecting high risk victims to domestic violence advocacy programs, community and faith-based programs, nonprofit mental health programs, and other programs that may be able to assist high risk victims;
- Procedures for local or regional domestic violence advocacy services to consult with prosecutors on charges and negotiated plea agreements in cases referred to the services.

Domestic violence law enforcement training

Biennial professional training

Currently, the AG, with the advice of the Ohio Peace Officer Training Commission (OPOTC), is required to adopt rules, in accordance with the Administrative Procedure Act,³⁴ that set forth minimum standards for continuing professional training for peace officers and troopers and governing the administration of such programs for peace officers and troopers. The rules must include several mandatory authorizations and prohibitions. The bill adds a provision requiring that the rules, in addition to the currently required content, also must do or include the following:³⁵

- Require every peace officer and trooper who handles complaints of domestic violence to complete biennial professional training on both of the following (related to this requirement, the bill specifies that it is an exception to an existing provision that specifies that continuing training is not required if reimbursement funding is not available);
- Intervention techniques in domestic violence cases and the use of an evidence-based lethality assessment screening tool to determine the level of risk to a victim of domestic violence;
- The referral of high risk victims to local or regional domestic violence advocacy services;
- Allow OPOTC to pay for the training described above using federal funds made available to the state or localities pursuant to a program of the United States Department of Justice or using funds appropriated by the General Assembly or allocated for that purpose by the AG. To assist with the bill's costs to the OPOTC, the bill also increases, in the Attorney General's operating budget, the amount appropriated from the Ohio Peace Officer Training Academy Fee Fund to Police Officers' Training Academy Fee line, by \$150,000 in FY 2020.³⁶

³⁴ R.C. Chapter 119, not in the bill.

³⁵ R.C. 109.803(B)(4) and (5); also (A)(1).

³⁶ Sections 7 and 8.

Local law enforcement policies

Under existing law, each agency, instrumentality, or political subdivision that is served by any peace officer who is authorized to make arrests for a violation of state or local law must adopt written policies, written procedures implementing the policies, and other written procedures for the appropriate response to each report of an alleged incident of the offense of domestic violence or the offense of violating a protection order. Each policy must include specified types of provisions, including provisions requiring peace officers who serve the entity to engage in specified types of conduct. The bill expands the specified types of peace officer conduct that must be required in each policy to also require two additional types of conduct. First, the policy must require that peace officers screen a victim of the offense of domestic violence or the offense of violating a protection order using an evidence-based lethality assessment screening tool adopted under the provisions described above in “**Procedures for high risk domestic violence victims**” to determine if the case should be referred to local or regional domestic violence advocacy services as required under those provisions. Second, the policy must require that a peace officer who conducts an evidence-based lethality assessment screening submit the results of any screening to the court and prosecuting attorney having jurisdiction over any criminal complaint filed in connection with the offense when the investigative file, police report, and other information in that case is sent to the court and the prosecutor.³⁷

Domestic violence training

Currently, the AG is required to adopt rules in accordance with the Administrative Procedure Act that govern the training of peace officers in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and domestic violence civil protection orders and temporary protection orders. The rules must include specified types of provisions, including specified training related to those matters that is required to complete peace officer basic training. The bill expands the required content of the rules to require that the AG also include both of the following in the rules:³⁸

- A requirement that the required basic training for peace officers include, in addition to the currently mandated training, training in using an evidence-based lethality assessment screening tool to determine the level of risk to a victim of domestic violence and to refer high risk victims to local or regional domestic violence advocacy services, as required under the provisions described above in “**Procedures for high risk domestic violence victims**”;
- A list of validated and evidence-based lethality assessment screening tools that constitute “qualified lethality assessment screening tools,” including all of the following:

³⁷ R.C. 2935.032(A)(2)(e) and (f).

³⁸ R.C. 109.744(B)(4) and (C).

- The domestic violence lethality screen for first responders developed by the Maryland Network Against Domestic Violence;
- The danger assessment for law enforcement tool developed by the Jeanne Geiger Crisis Center;
- Any other lethality assessment screening tool endorsed by the United States Department of Justice and found to meet criteria established by the AG.

Domestic Violence Prosecution Study Committee

The bill creates the Domestic Violence Prosecution Study Committee to examine policies to protect victims of domestic violence throughout the judicial process, including an investigation into the prevalence of dropped or amended domestic violence charges, and the cases in which a charge of domestic violence was dropped and the victim of domestic violence later became the victim of a homicide.³⁹

Membership

The Study Committee will consist of five members appointed by the Speaker of the House of Representatives and five members appointed by the Minority Leader of the House of Representatives, for a total of ten members. Both the Speaker and Minority Leader must include all of the following in the five members they appoint:⁴⁰

- One member who is a domestic violence survivor;
- One member who is a domestic violence advocate;
- One member who is a prosecutor who handles domestic violence cases;
- One member who is a member of the judiciary with experience handling domestic violence cases;
- One member who is a member of the House of Representatives.

Timing

The Speaker and Minority Leader must make appointments to the Study Committee as soon as practicable after the bill's effective date and the Study Committee must produce a report of its findings not later than one year after the bill's effective date. The Study Committee must submit that report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives. Upon submission of the report, the Study Committee ceases to exist.⁴¹

³⁹ Section 6(A) and (B).

⁴⁰ Section 6(A).

⁴¹ Section 6(C).

Prosecution conduct

The bill states that the General Assembly, in enacting the bill, encourages prosecuting attorneys, in cases related to an incident of domestic violence, to consider the totality of the circumstances, to review all of the evidence in the case, and to resist seeking voluntary dismissal or an entry of *nolle prosequi* based solely on the victim's wishes, unless justice demands otherwise.⁴²

Evidence rules

In the bill, the General Assembly respectfully requests the Supreme Court to review the Ohio Rules of Evidence to consider how the Rules may better aid victims of domestic violence without diminishing the fundamental fairness to alleged perpetrators of domestic violence.⁴³

Technical changes

The bill changes several inaccurate references to R.C. 2935.03(B)(1) to the correct reference to R.C. 2935.03(A),⁴⁴ and relocates current R.C. 2935.033 to new R.C. 2935.034, without substantive change.⁴⁵

HISTORY

Action	Date
Introduced	05-16-19
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⁴² Section 3.

⁴³ Section 4.

⁴⁴ R.C. 2935.033(A), (B)(1), (B)(2), and (C).

⁴⁵ R.C. 2935.034.