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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 90  
134<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

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

Dennis M. Papp, Attorney

### SUMMARY

- Expands the offense of “domestic violence” to also prohibit knowingly impeding the normal breathing or blood circulation of a family or household member by applying pressure to the throat or neck, or by blocking the nose or mouth, of the family or household member and provides special penalties for violations of the prohibition.
- Specifies that in a prosecution of “domestic violence” in violation of the above prohibition, it is not required to allege or prove that the family or household member suffered physical harm, serious physical harm, or visible injury.
- Creates as an affirmative defense to a charge of “domestic violence” by violating the above prohibition that the act was done to the family or household member as part of a medical or other procedure undertaken for the victim’s benefit.

### DETAILED ANALYSIS

#### Expansion of offense of “domestic violence”

##### New prohibition

The bill adds a new prohibition under the offense of “domestic violence.” The new prohibition prohibits any person from knowingly impeding the normal breathing or circulation of the blood of a “family or household member” (see below) by applying pressure to the throat or neck, or by blocking the nose or mouth, of the family or household member.<sup>1</sup> In a prosecution for a violation of that prohibition, it is not required to allege or prove that the

<sup>1</sup> R.C. 2919.25(D).

family or household member who is the victim suffered physical harm, serious physical harm, or visible injury.<sup>2</sup>

Under the bill, it is an affirmative defense to a charge of violating the new 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.<sup>3</sup>

## **Penalties**

Domestic violence committed in violation of the new prohibition generally is a third degree felony and, when it is a third degree felony, the court must do one of the following: (1) except as described in clause (2), the court must impose a mandatory prison term of 6, 9, 12, 18, 24, 30, or 36 months, or (2) if the victim is a pregnant woman and the offender, in committing the violation, caused serious physical harm to the “pregnant woman’s unborn” or caused the “termination of the pregnant woman’s pregnancy” (both defined as in existing law, unchanged by the bill), the court must impose a mandatory prison term of 9, 12, 18, 24, 30, or 36 months.<sup>4</sup> But if the offender previously was convicted of domestic violence or of two or more “offenses of violence” (defined as in existing law, unchanged by the bill), a violation of the new prohibition is a second degree felony, and the court must impose a mandatory prison term that is one of the minimum terms prescribed for a second degree felony – those prescribed minimum terms are 2, 3, 4, 5, 6, 7, or 8 years.<sup>5</sup>

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>6</sup>

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

The existing definition of “family or household member” used in the law regarding the offense of domestic violence, which applies to the bill’s new prohibition, specifies that “family or household member” means:<sup>7</sup> (1) any of the following who is residing or has resided with the offender: (a) a spouse, a person living as a spouse, or a former spouse of the offender, (b) a parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender, or (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, or (2) the natural parent of

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<sup>2</sup> R.C. 2919.25(G).

<sup>3</sup> R.C. 2919.25(H).

<sup>4</sup> R.C. 2919.25(E)(1), (6), and (8)(d) and (e), 2929.13(F)(17), and 2929.14(A)(3)(b).

<sup>5</sup> R.C. 2919.25(E)(1), (7), and (8)(f); 2929.13(F)(17), and 2929.14(A)(2).

<sup>6</sup> R.C. 2929.13(F).

<sup>7</sup> R.C. 2919.25(F)(1), redesignated by the bill as division (I)(1).

any child of whom the offender 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>8</sup>

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## HISTORY

Action	Date
Introduced	02-24-21

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<sup>8</sup> R.C. 2919.25(F)(2), redesignated by the bill as division (I)(2).