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Bill Analysis

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Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Boyd and Carruthers

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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 against a family or household member.
- Expands the offense of “domestic violence” to also prohibit reckless strangulation, of a family or household member.
- 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.
- Expands the definition of “family or household member” for the purpose of petitioning for certain protection orders 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.
- Requires each agency, instrumentality, and political subdivision to 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.
- Requires the Attorney General to adopt rules to require that peace officer basic training include training on evidence-based lethality assessment screening tools.

* This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the legislative history may be incomplete.

- 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.
- 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.
- Creates the Domestic Violence Prosecution Study Committee.
- Names the bill “Aisha’s Law.”
- Makes an appropriation.

TABLE OF CONTENTS

Aisha’s Law	3
Aggravated murder	3
New offense circumstances	3
Background – capital sentencing law	4
Domestic violence – strangulation	4
Setting bail and sentencing in criminal cases	5
Domestic violence protection orders	5
Family or household member	5
Additional information in the petition	6
Emergency protection orders	6
Form of the request	6
Issuance of an emergency protection order	6
Communicating the terms of the order	7
Expiration of the order	7
Advising victims of the availability of emergency protection orders	7
Procedures for high risk domestic violence victims	7
Domestic violence law enforcement training.....	9
Biennial professional training.....	9
Local law enforcement policies.....	9
Domestic violence training.....	10
Domestic Violence Prosecution Study Committee.....	10
Membership	10
Timing	11
Evidence	11

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 include domestic violence circumstances. Under the bill, a person commits aggravated murder if they purposely cause 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 continuing law, aggravated murder is punishable by a sentence of death or life imprisonment. The sentence is determined under special sentencing provisions described below in "**Background – capital sentencing law.**"²

For purposes of the expanded aggravated murder offense:³

- "Family or household member" means:
 - Any of the following who is residing with or has resided with the offender:
 - ❖ A spouse, person living as a spouse, or a former spouse of the offender;⁴
 - ❖ A parent, a foster parent, or a child of the respondent, or another person related by consanguinity or affinity to the offender;
 - ❖ 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;
 - ❖ A child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the offender.
 - 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

¹ Section 5.

² R.C. 2903.01(G).

³ R.C. 2903.01(I)(5), (6), and (7), by reference to R.C. 3109.51 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.

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 continuing law, the only situation in which a person may face a sentence of death is when the person is convicted of the offense of “aggravated murder” and of a specification of an “aggravating circumstance.” 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 Predator Law.⁵ 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. The person may be sentenced to death only if the trial jury and trial judge, or the three-judge 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.⁶

Domestic violence – strangulation

The bill expands the offense of “domestic violence” to also prohibit reckless strangulation of a family or household member. The offense is defined as 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.⁷ Violation of this new domestic violence offense is generally a third degree felony, but becomes a second degree felony if the offender previously was convicted of domestic violence or was convicted of two or more “offenses of violence.”⁸

⁵ R.C. 2929.022(B).

⁶ R.C. 2929.02 and 2929.03, not in the bill; and R.C. 2929.022 and 2929.04.

⁷ R.C. 2919.25(D) with conforming changes in 2929.13(F)(17) and 2929.14(A).

⁸ R.C. 2919.25(E)(6) and (7).

It is not required in a prosecution under the strangulation 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.⁹

It is an affirmative defense to a charge of domestic violence under the bill's strangulation 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.¹⁰

While prosecution for multiple offenses is not precluded, the bill stipulates that if an offender is convicted of or pleads guilty to domestic violence and is also 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 continuing law.¹¹

Setting bail and sentencing in criminal cases

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.¹²

Domestic violence protection orders

Family or household member

The bill 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 and who is residing with or has resided with the respondent. As a result, a guardian or custodian of such a child may petition for a domestic violence protection order, a juvenile civil protection order, or a civil stalking protection order on behalf of such a child.¹³

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.¹⁴

⁹ R.C. 2919.25(G).

¹⁰ R.C. 2919.25(H).

¹¹ R.C. 2919.25(I).

¹² R.C. 2937.23(A)(3), 2929.12(G), and 2929.22(B)(1)(h).

¹³ R.C. 3113.31(A)(3)(a)(iv), and R.C. 2151.34 and 2903.214, not in the bill.

¹⁴ R.C. 3113.31(A)(10) by reference to R.C. 3109.51, not in the bill.

Additional information in the petition

The bill also allows the petitioner for a domestic violence 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.¹⁵

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 during any period of time that the court is not open for regular business.

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:¹⁶

- 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 under “**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.

An emergency protection order may contain any of the following terms:¹⁷

- 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;

¹⁵ R.C. 3113.31(C)(2).

¹⁶ R.C. 2919.261(A).

¹⁷ R.C. 2919.261(B), (C), and (F).

- 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.

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:

- 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 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:¹⁸

- 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 investigates a report of an alleged incident of domestic violence or an alleged incident of violating a protection order, the bill requires that the peace officer advise the victim of the availability of an emergency protection order, in addition to the other protection orders the peace officer must advise the victim of under continuing law.¹⁹

Procedures for high risk domestic violence victims

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

¹⁸ R.C. 2919.261(E).

¹⁹ R.C. 2935.032(C)(2).

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.²⁰ The bill requires each law enforcement agency, instrumentality, or political subdivision that is served by a peace officer with arrest authority to adopt written policies, written procedures implementing the policies, and any other necessary written procedures for the peace officers who serve the agency, instrumentality, political subdivision, or geographic region 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. The policies and procedures must include all of the following:²¹

- 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 law enforcement agency, instrumentality, or political subdivision from those qualified by the Attorney General (AG) under “**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;
- 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 programs to consult with prosecutors on charges and negotiated plea agreements in cases referred to the services.

²⁰ R.C. 2935.033(B).

²¹ R.C. 2935.033(A) and (C).

Domestic violence law enforcement training

Biennial professional training

The bill requires the AG, with the advice of the Ohio Peace Officer Training Commission (OPOTC), to adopt rules, in accordance with the Administrative Procedure Act,²² that require every peace officer and trooper who handles complaints of domestic violence to complete biennial professional training on both of the following:

- 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.

Additionally, the AG must adopt rules, with the advice of OPOTC to allow OPOTC to pay for this training 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.²³ 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 2020.²⁴

Local law enforcement policies

Under existing law, each agency, instrumentality, or political subdivision that is served by any peace officer 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 domestic violence or violating a protection order. The bill requires those entities to include an additional policy to require a peace officer to screen a victim of domestic violence or violating a protection order using an evidence-based lethality assessment screening tool to determine if the case should be referred to local or regional domestic violence advocacy services. The bill also requires those entities to adopt policies that require a peace officer that conducts an evidence-based lethality assessment screening to 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.²⁵

²² R.C. Chapter 119.

²³ R.C. 109.803(B)(4) and (5).

²⁴ Sections 7 and 8.

²⁵ R.C. 2935.032(A)(2)(e) and (f).

Domestic violence training

The bill requires the AG to include both of the following in rules that govern the training of peace officers in the handling of domestic violence, domestic violence-related offenses and incidents, and protection orders or consent agreements issued under continuing law:²⁶

- A requirement that basic training for peace officers include 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;
- A list of validated and evidence-based lethality assessment screening tools that constitute “qualified lethality assessment screening tools,” including all of the following:
 - 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.

Membership

The Study Committee consists 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:

- 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.

²⁶ R.C. 109.744(B)(4) and (C).

Timing

The Speaker and Minority Leader must make appointments to the Study Committee as soon as practicable after the bill becomes effective 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.²⁷

Evidence

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.²⁸

HISTORY

Action	Date
Introduced	05-16-19
Reported, H. Criminal Justice	---

H0003-RH-133/ar

²⁷ Section 6.

²⁸ Section 4.