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OHIO LEGISLATIVE SERVICE COMMISSION

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Office

H.B. 3
134th General Assembly

Fiscal Note & Local Impact Statement

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Version: As Reported by House Criminal Justice

Primary Sponsors: Reps. Boyd and Carruthers

Local Impact Statement Procedure Required: Yes

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Highlights

- The expansion of the offense of domestic violence will shift a potentially significant number of misdemeanor domestic violence cases, and related processing and sanctioning costs, from municipal criminal justice systems 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 not readily quantifiable. Neither is the amount of related annual revenue (fines, and court costs and fees) that will shift.
- The GRF-funded incarceration costs incurred by the Department of Rehabilitation and Correction (DRC) are likely to increase by hundreds of thousands of dollars or more annually, as the number of felony offenders affected by the bill's strangulation provision appears to be quite large.
- Courts of common pleas will see increased operating expenses to process additional requests for protection orders, and to address requests outside of regular business hours. The annual magnitude of this cost increase is unknown.
- The annual costs for subdivisions to adopt a lethality assessment screening tool policy and to submit the results of the screenings to the appropriate court and prosecuting attorney will be minimal at most and generally absorbed using existing staff and resources.
- Local law enforcement agencies statewide could incur biennial training costs to provide additional domestic violence training. This training is mandated regardless of the availability of state funds for reimbursement.
- The expansion of the offense of aggravated murder may increase the costs that a county criminal justice system incurs to process homicide cases, specifically the costs associated

with prosecution and indigent defense. The Office of the State Public Defender may incur additional expenditures in order to reimburse counties for their annual indigent defense costs. Around 25 years after the bill's effective date, DRC's GRF-funded incarceration costs will increase by hundreds of thousands of dollars annually, because of a likely increase in the number of offenders serving time for aggravated murder.

- 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).
- The bill, in order to assist the Ohio Peace Officer Training Academy in paying for costs generated by the bill, increases the amount appropriated from the Police Officers' Training Academy Fee Fund (Fund 4210) to line item 055617, Police Officers' Training Academy Fee, by \$150,000 in FY 2022.

Detailed Analysis

Aggravated murder

The bill expands the offense of "aggravated murder" to include the death of another person when both of the following apply: (1) the victim was a family or household member of the offender, and (2) the victim is the victim of a prior "offense of violence" or domestic violence committed by the offender, or the offender has previously been convicted of felony domestic violence resulting in serious physical harm.

Trial

The county is responsible for trying and sentencing defendants in aggravated murder cases. This includes both the costs for the prosecution and defense counsel, as many defendants in murder cases are indigent. Any aggravated murder trial will likely incur costs for expert witness consultation and testimony, psychologists, and investigators. 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.

This expanded offense likely means the elevation of certain cases from a homicide, manslaughter, or murder to aggravated murder. 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.

Incarceration expenditures

In calendar year (CY) 2016, the average time served for an offender sentenced to prison for the offense of aggravated murder was 31.76 years, 7.3 years longer than an offender sentenced for murder, for which the average time served was 24.46 years.¹ The impact of the aggravated murder provision on the Department of Rehabilitation and Correction is that some offenders that may have been committed to the Department for murder could instead be

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

committed for aggravated murder and likely sentenced for a longer term. From CYs 2016 through 2020, the average number of offenders committed annually to the Department for murder was 115 out of a total inmate population of over 40,000. Over the same period, the number of offenders committed for aggravated murder averaged 73.

The marginal annual cost for a small number of additional bed years is currently about \$4,000 per bed. So, for instance, 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 \$700,000 (25 offenders x 7 additional years x \$4,000). This increase would come after the time served for a murder charge under current law, or approximately 25 years or more after the bill's effective date.

Strangulation

The bill expands the offense of domestic violence to prohibit knowingly impeding the normal breathing or blood circulation of a family or household member. 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.

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, the offender 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.

The Office of the Ohio Attorney General compiles data on the number of domestic violence incidents occurring statewide. In CY 2019, law enforcement responded to 37,607 incidents of domestic violence in which domestic violence charges were filed; in CY 2018, that number was 38,475. Information obtained from the Domestic Violence Division of the Columbus City Attorney's Office indicates that, in CY 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 possibility 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 a result, these offenders would be sentenced for longer terms than they otherwise would have received under current law.

The bill also will increase the number of offenders entering prison by shifting a potentially large number of the misdemeanor domestic violence cases involving strangulation or suffocation to a felony of the third degree.

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 2021, the average annual cost of incarcerating an offender in prison was \$35,405.

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 bill's domestic violence offense 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

Expenditures

The bill's expanded domestic violence offense 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 not readily quantifiable.

Fine, and court cost and fee revenues

For persons convicted of, or pleading guilty to, a felony, the sentencing court generally is required and/or permitted to impose fines, and court costs and fees 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 fines, and court costs and fees 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); and
- 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:

- Allows an officer, on behalf of and with the consent of the victim of domestic violence,² to request an emergency protection order outside of regular court business hours if the officer believes that the victim or a child of the victim is in immediate and present danger;
- 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;
- Requires a court to issue an emergency protection order if the court finds probable cause; and
- Specifies that the emergency protection order is effective as soon as it is signed by the court.

The number of petitioners for emergency protection orders is likely to increase to some degree. This is because some individuals who are not eligible to petition for a protection order under current law will meet the bill’s requirements permitting them to do so. The number of additional new filings that may result is unknown, but 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.

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. 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.

² If the victim is unable to give the specified consent for any reason, including that the victim is intoxicated, drugged, or unconscious, the law enforcement officer is permitted to make such a request without the specified consent of the victim.

Lethality assessment and 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:

- Adopt a policy requiring the screening of a victim of an offense of domestic violence or an offense of violating a protection order using a lethality assessment screening tool, and officers to submit results of the screening to the appropriate court and prosecuting attorney; and
- Identify local and regional domestic violence advocacy services to which individuals determined to be high risk using a lethality assessment screening tool may be referred.

The costs to adopt such policies and to identify services for referral will be minimal at most and generally absorbed using existing staff and resources.

Law enforcement training

Attorney General and Ohio Peace Officer Training Academy

The bill requires the Attorney General to adopt rules as part of continuing professional training (CPT) requiring every peace officer and trooper who handles domestic violence complaints to complete biennial training on: (1) intervention techniques in domestic violence cases and the use of an evidence-based lethality assessment screening tool, and (2) referral of high-risk victims to domestic violence advocacy services.

The bill will pose a short-term administrative burden on the Attorney General to establish the training protocol. These rules would be periodically evaluated and potentially revised. The Attorney General will be able to handle the associated work without a significant increase in resources, as it will be incorporated into existing statutory responsibilities regarding peace officer training certification and rulemaking. Presumably, the Ohio Peace Officer Training Commission, an affiliate of the Attorney General, will develop the rules, curricula, minimum attendance, and other requirements necessary for approval of a training program. The bill is likely to increase costs for the Commission to certify training programs.

To assist the Ohio Peace Officer Training Academy (OPOTA) in paying for costs generated by the bill, the amount appropriated from the Police Officers' Training Academy Fee Fund (Fund 4210) to line item 055617, Police Officers' Training Academy Fee, is increased by \$150,000 in FY 2022. The Attorney General uses this line item to pay for costs of operating OPOTA and its training programs.

Law enforcement agencies

It is the appointing authority's responsibility to ensure those handling domestic violence complaints complete the training. Generally, there are two types of costs associated with training: the cost of the training course itself and, potentially, increased payroll costs if the authority needs to schedule additional officers to cover shifts of those attending training.

The Ohio Peace Officer Training Commission is authorized to require up to 24 hours of CPT each year. The number of hours set by the Commission is based upon available funding for reimbursement, although as a matter of practice some agencies exceed the state's mandated CPT hours. If no state funding for reimbursement is available, no CPT can be required. The bill

exempts this training from that reimbursement provision. As such, the bill's initial and ongoing/annual training must be completed even without dedicated state funding.

OPOTA's 2021 course catalog includes various onsite trainings in the category of human relations. These trainings are typically eight-hour courses. The cost is between \$80 and \$100 for law enforcement, with an average hourly rate of around \$12. LBO assumes that costs will be incurred at this rate if onsite training at OPOTA is chosen, provided it is offered as a course option. Such costs will depend on the extent of the training requirements developed in rule by the Attorney General. However, it should be noted that other training options might be available, including online courses. Training could also be provided by private or other publicly funded training academies.

If this required training were already part of a law enforcement agency's basic and CPT, there would be no additional cost for training. If the training is to be completed in addition to current practice, an estimated \$404,400 would be required statewide to provide one hour of training for each peace officer in the state (33,700 x \$12), not including payroll costs.

Highway Patrol arrest authority

The bill's provision requiring the Superintendent and troopers of the Ohio State Highway Patrol, within the limits of their territorial jurisdiction, to arrest and detain a person found violating a state law until a warrant can be obtained will have no fiscal impact on the Patrol, as the provision codifies current practice.

Domestic Violence Prosecution Study Committee

The bill creates the Domestic Violence Prosecution Study Committee, consisting of ten members appointed by the Speaker and Minority Leader of the House of Representatives and tasked with examining policies to protect victims of domestic violence throughout the judicial process. The Study Committee is required to produce a report of its findings no later than one year after the provision's effective date, upon which the Study Committee ceases to exist. It is likely that the House of Representatives can absorb any related costs with existing staff and resources.

Encouragement of prosecution

The bill (in uncodified language), on behalf of the General Assembly, encourages prosecuting attorneys to do all of the following in domestic violence cases:

- Consider the totality of the circumstances;
- Review all of the evidence in the case; and
- Resist seeking voluntary dismissal or an entry of nolle prosequi based solely on the victim's wishes, unless justice demands otherwise.

As this provision neither requires nor prohibits prosecuting attorneys from taking certain actions, it has no direct fiscal effect on the state or political subdivisions.

Ohio Rules of Evidence

The bill (in uncodified language), on behalf of the General Assembly, requests the Ohio 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. As the bill does not require the Ohio Supreme Court to take any action, there is no direct fiscal effect on the state or political subdivisions.