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Bill Analysis

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Version: As Passed by the House

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 felony domestic violence or a felony offense of violence that resulted in serious physical harm against that family or household member.
- 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 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.
- Expands existing civil immunity related to domestic violence arrests and seizures by “peace officers described in R.C. 2935.03(A)” so that it also applies to create immunity related to civil actions against a state officer or employee under the Court of Claims Law. 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.
- Regarding law enforcement authority of the Superintendent and Troopers of the Ohio State Highway Patrol:
 - Enacts a provision in R.C. 2935.03(A) that specifies that the Superintendent and Troopers are to arrest and detain, until a warrant can be obtained, a person found violating state law within the limits of the Superintendent’s or Trooper’s territorial jurisdiction;
 - By locating the provision described in the preceding paragraph in R.C. 2935.03(A), it appears that the immunity provision described in the third preceding dot point will apply to the Superintendent and Troopers in the specified circumstances.
- 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.
- Changes several references to “peace officers described in R.C. 2935.03(B)(1)” to the broader reference to “peace officers described in R.C. 2935.03(A).”
- 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-related 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 when the offense was a felony and resulted in serious physical harm or a felony offense of violence against the victim resulting in serious physical harm. 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.

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 former spouse of the offender;⁴
 - ❖ A parent, foster parent, or 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.

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, 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.

- **“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 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

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

⁶ R.C. 2929.022(B).

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

Domestic violence – strangulation or suffocation

The bill expands the offense of “domestic violence” to also prohibit, in addition to the currently prohibited conduct, knowingly 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

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 does not preclude a prosecution for any other offense and that conduct that may be prosecuted under domestic violence and under any other offense may be prosecuted under both of 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

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).

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.

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 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, in addition to the information currently required to be 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

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.

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).

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 either of the two existing 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 a victim of domestic violence, may request an emergency protection order from a “judicial officer” (the bill does not define this term) during any period of time that the court is not open for regular business. A law enforcement officer generally is permitted under the bill to make a request for an emergency protection order only with the consent of the victim but may make such a request without consent if the victim is unable to give consent for any reason, including that the victim is intoxicated, drugged, or unconscious.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. If the request is made orally, it must be recorded by the judicial officer and made part of the file regarding the matter. A request for an emergency protection order must contain all of the following:²⁵

- An allegation of either of the following by the person seeking the order:
 - 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;

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

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

²⁴ R.C. 2919.261.

²⁵ R.C. 2919.261(A)

- 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.
- Whether the law enforcement officer making the request is doing so with the consent of the victim or is making the request without the consent of the victim and, if the officer is making it without the consent of the victim, the reason for which the victim is unable to consent.

Issuance or denial 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 approve the request and issue an emergency protection order. If the request is made without the consent of the victim, in addition to all other information considered in determining whether to find probable cause for that belief, the court must consider the reason for which the victim is unable to give consent as specified in the request. Absent a finding of probable cause, the court must deny the request and may not issue an emergency protection order. The law enforcement officer who made a request for an emergency protection order that was denied is not permitted to make a request for an emergency protection order to a different judge with respect to the same victim based on the same allegation of a recent incident of domestic violence as the incident included in the request that was denied.²⁶

Content of an emergency protection order

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.

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 both of the following:²⁸

- Provide a copy of the order to each person protected by the order;
- Provide a copy of the order to the alleged domestic violence offender who is subject to the order or inform the alleged offender of the existence of the protection order.

Expiration of the order

An emergency protection order is effective as soon as it is signed by the court and remains in effect until the earliest of the following:²⁹

- 96 hours after the order was signed;
- The first day that the court is open for business after the day the order was signed;
- 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 described in R.C. 2935.03(A)” who is authorized to make arrests for a violation of state or local law (see “**Other changes,**” below, regarding a change in this reference from “peace officer described in R.C. 2935.03(B)” to “peace officer described in R.C. 2935.03(A)”) 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 degree felony, depending on the circumstances present, applies to a violation of the prohibition involving an emergency protection order.³¹

²⁸ R.C. 2919.261(D).

²⁹ R.C. 2919.261(E).

³⁰ R.C. 2935.032(C)(2).

³¹ R.C. 2919.27.

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 described in R.C. 2935.03(A)" who has arrest authority for violations of state or local law (see "**Other changes**," below, regarding this reference to "peace officer described in R.C. 2935.03(A)") 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);
- 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;

³² R.C. 2935.033(B).

³³ R.C. 2935.033(A) and (C).

- 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

Local law enforcement policies

Under existing law, each agency, instrumentality, or political subdivision that is served by any "peace officer described in R.C. 2935.03(B)" who is authorized to make arrests for a violation of state or local law must adopt written policies, written procedures implementing the

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.

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 changes the peace officer reference to any “peace officer described in R.C. 2935.03(A)” (see “**Other changes**,” below, regarding the change in this reference) and 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:
 - The domestic violence lethality screen for first responders developed by the Maryland Network Against Domestic Violence;

³⁷ R.C. 2935.032(A)(2)(e) and (f).

³⁸ R.C. 109.744(B)(4) and (C).

- 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.

Peace officer civil immunity

Expansion to include Court of Claims actions

The bill expands existing civil immunity related to domestic violence arrests and seizures by “peace officers described in R.C. 2935.03(A)” so that it also applies to create immunity for the officers related to civil actions against a state officer or employee under the Court of Claims Law. Current law provides an immunity from civil liability for “peace officers described in R.C. 2935.03(A)” who make an arrest in specified circumstances or who seize a deadly weapon in specified circumstances to the extent described in and in accordance with specified laws regarding officers and employees of the state or persons acting under a specified type of contract with the state,³⁹ and regarding political subdivision employees⁴⁰ (currently, there are 20 categories of peace officers described in R.C. 2935.03(A), including sheriffs, municipal police officers, Department of Natural Resources peace officers, port authority special police officers, the House of Representatives Sergeant at Arms, etc.⁴¹). The arrests and seizures with respect to which the immunity applies are: (1) an officer’s arrest and detention of a person for the offense of “domestic violence” or the offense of “violating a protection order,” in accordance with law authorizing a peace officer to make such an arrest based on the officer’s reasonable grounds to believe that the offense has been committed and reasonable cause to believe that the person arrested is guilty of committing the offense, and (2) an officer’s seizure of a deadly weapon in response to a report of an alleged incident of the offense of “domestic violence” or the offense of “violating a protection order” when the circumstances of the incident involved the use or threatened use of a deadly weapon or a person involved in the incident brandished a deadly weapon.

Under the bill, “peace officers described in R.C. 2935.03(A)” who are sued in the Court of Claims also will have immunity in the specified circumstances under the Court of Claims Law.⁴²

Expansion to include coverage of State Highway Patrol

The existing civil immunity provisions described above, expanded by the bill as described above, currently apply to “peace officers described in R.C. 2935.03(A).” Under

³⁹ R.C. 9.86, not in the bill.

⁴⁰ R.C. 2744.03, not in the bill.

⁴¹ R.C. 2935.03(A)(1) to (4).

⁴² R.C. 2935.03(B)(3) and (4).

current law, unchanged by the bill,⁴³ the Superintendent and Troopers of the Ohio State Highway Patrol (OSHP officers) are “peace officers” for purposes of R.C. Chapter 2935, but they are not among the list of “peace officers described in R.C. 2935.03(A).” As described below in “**State Highway Patrol arrest authority**,” the bill includes OSHP officers within the list of “peace officers described in R.C. 2935.03(A).” As a result, it appears that the immunities in the provisions described above will apply with respect to OSHP officers in the specified circumstances, in addition to applying to all the other peace officers currently “described in R.C. 2935.03(A).”

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.⁴⁴

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:⁴⁵

- 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

⁴³ R.C. 2935.01, not in the bill.

⁴⁴ Section 6(A) and (B).

⁴⁵ Section 6(A).

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.⁴⁶

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.⁴⁷

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.⁴⁸

State Highway Patrol arrest authority

The bill enacts a provision that specifies that OSHP officers are to arrest and detain, until a warrant can be obtained, a person found violating state law, within the limits of the officer's territorial jurisdiction.⁴⁹ Note that the bill's provision parallels "on-sight" arrest authority specified in existing law for 20 categories of peace officers (e.g., sheriffs, municipal police officers, Department of Natural Resources peace officers, port authority special police officers, the House of Representatives Sergeant at Arms, etc.) who are authorized to arrest persons they find within their territorial jurisdiction committing a crime.⁵⁰

The "territorial jurisdiction" of the OSHP and its officers, expressed in current statutes that grant them law enforcement authority, generally is on roads and highways; on state property and in state institutions; and in areas of riot, civil disorder, or insurrection when requested by local authorities and ordered to serve there by the Governor.⁵¹ Under the current law enforcement and arrest authority of OSHP officers, they:⁵² (1) are vested with the authority of peace officers for the purpose of enforcing the state laws that it is the duty of the OSHP to enforce and may arrest, without warrant, any person who, in the presence of the OSHP officer, is engaged in the violation of any such laws, (2) have certain powers and duties related to traffic and vehicle laws, (3) have certain powers and duties, including express arrest authority, related

⁴⁶ Section 6(C).

⁴⁷ Section 3.

⁴⁸ Section 4.

⁴⁹ R.C. 2935.03(A)(5).

⁵⁰ R.C. 2935.03(A)(1) to (4).

⁵¹ R.C. 5503.01 and 5503.02, not in the bill.

⁵² R.C. 4506.06, 4513.39, 5503.01, 5503.02, 5503.07, and 5503.31, not in the bill.

to damaging roadways or specified road-related property, (4) have certain duties regarding motor vehicle accidents in specified circumstances and have express authority to arrest a person suspected of committing a felony who is in a vehicle on a state highway, (5) have enforcement authority regarding crimes on state property and in specified circumstances have express arrest authority regarding crimes committed on state property, (6) have certain powers and duties, in specified circumstances, related to the enforcement of laws within areas threatened by riot, civil disorder, or insurrection, and express authority to arrest criminal offenders found within such areas, (7) have the authority to provide emergency assistance to other law enforcement officers in specified circumstances and, when so assisting, have the same authority as the officers being assisted, (8) in specified circumstances, are to provide security for certain officials and have express arrest powers to apprehend persons who, in violation of law, endanger or threaten the security of a person being protected, and (9) have authority to arrest a person who, in the officer's presence, is violating the Commercial Drivers' License Law, to arrest a person for a violation of a traffic law of a specified nature committed on a state highway, to arrest a misdemeanor found violating a law in a rest area or roadside park within a state highway or interstate, and to arrest on a turnpike project in the same manner as on other state properties.

Other changes

The bill changes several references to "peace officers described in R.C. 2935.03(B)(1)" to a reference to "peace officers described in R.C. 2935.03(A),"⁵³ and relocates current R.C. 2935.033 to new R.C. 2935.034, without substantive change.⁵⁴

Regarding the first change, currently, there are 20 categories of peace officers described in R.C. 2935.03(A), including sheriffs, municipal police officers, Department of Natural Resources peace officers, port authority special police officers, the House of Representatives Sergeant at Arms, etc.⁵⁵ As described above in "**State Highway Patrol arrest authority**," the bill includes OSHP officers within the list of "peace officers described in R.C. 2935.03(A)." Currently, unchanged by the bill, R.C. 2935.03(B) specifies that when any of a list of designated offenses has been committed within the limits of the political subdivision, metropolitan housing authority housing project, regional transit authority facilities or enforcement areas, college, university, veterans' home, port authority, or municipal airport or other municipal air navigation facility, in which the peace officer is appointed, employed, or elected or within the limits of the territorial jurisdiction of the peace officer, a "peace officer described in R.C. 2935.03(A)" may arrest and detain until a warrant can be obtained any person who the peace officer has reasonable cause to believe is guilty of the violation. Thus, it appears that not all peace officers described in R.C. 2935.03(A) are also included as peace officers described in R.C. 2935.03(B).

⁵³ R.C. 2935.032(A), (B)(1), (B)(2), and (C); the bill also uses this reference in R.C. 2935.033.

⁵⁴ R.C. 2935.034.

⁵⁵ R.C. 2935.03(A)(1) to (4).

HISTORY

Action	Date
Introduced	02-03-21
Reported, H. Criminal Justice	10-25-21
Reported, H. Rules and Reference	10-26-21
Passed House (92-4)	10-27-21
