



Michael J. O'Neill

Bill Analysis
Legislative Service Commission

H.B. 321

123rd General Assembly
(As Introduced)

Reps. Sutton, Taylor, Ford, Bender, Callender, Opfer, D. Miller, Britton, Netzley, Pringle, Clancy, Boyd, Jolivette, Flannery

BILL SUMMARY

- Statutorily recognizes the "battered child syndrome."
- Permits a defendant who is charged with an offense involving the use of force against another and who raises the affirmative defense of self-defense, to introduce expert testimony of the "battered child syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question.
- Permits a defendant who is charged with an offense involving the use of force against another and who pleads not guilty by reason of insanity to that charge to introduce expert testimony of the "battered child syndrome" and expert testimony that the defendant suffered from that syndrome as evidence to establish the requisite impairment of the defendant's reason, at the time of the commission of the offense, that is necessary for a finding that the defendant is not guilty by reason of insanity.

CONTENT AND OPERATION

Recognition of "battered child syndrome" and its use as an affirmative defense

Existing law recognition of "battered woman syndrome"

Under existing law, the General Assembly declares that it recognizes both of the following, in relation to the "battered woman syndrome" (sec. 2901.06(A)):

(1) That the syndrome currently is a matter of commonly accepted scientific knowledge;

(2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, the person may introduce expert testimony of the "battered woman syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this provision must be in accordance with the Ohio Rules of Evidence. (Sec. 2901.06(B).) (See **COMMENT 1**.)

Operation of the bill

The bill additionally recognizes the "battered child syndrome." The term "battered child syndrome" generally refers to the psychological and behavioral characteristics of abused children. (See **COMMENT 2**.)

Under the bill, the General Assembly recognizes both of the following, in relation to the "battered child syndrome" (sec. 2901.06(A)):

(1) That the syndrome currently is a matter of commonly accepted scientific knowledge;

(2) That the subject matter and details of the syndrome are not within the general understanding or experience of a person who is a member of the general populace and are not within the field of common knowledge.

If a person is charged with an offense involving the use of force against another and the person, as a defense to the offense charged, raises the affirmative defense of self-defense, under the bill, the person may introduce expert testimony of the "battered child syndrome" and expert testimony that the person suffered from that syndrome as evidence to establish the requisite belief of an imminent danger of death or great bodily harm that is necessary, as an element of the affirmative defense, to justify the person's use of the force in question. The introduction of any expert testimony under this provision must be in accordance with the Ohio Rules of Evidence. (Sec. 2901.06(B).)

Not guilty by reason of insanity

Existing law

If a defendant is charged with an offense involving the use of force against another and the defendant pleads not guilty by reason of insanity to the charge, existing law authorizes the defendant to introduce expert testimony of the "battered woman syndrome" and expert testimony that the defendant suffered from that syndrome as evidence to establish the requisite impairment of the defendant's reason, at the time of the commission of the offense, that is necessary for a finding that the defendant is not guilty by reason of insanity. The expert testimony must be introduced in accordance with the Ohio Rules of Evidence. (Sec. 2945.392(B).)

If a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's mental condition at the time of the offense charged. An examiner must conduct the evaluation. Existing law specifies the procedure by which the evaluation must be conducted and a written report of the evaluation must be filed.

If a court orders the evaluation to determine a defendant's mental condition at the time of the offense charged, the court must inform the examiner of the offense with which the defendant is charged. In conducting an evaluation of a defendant's mental condition at the time of the offense charged, the examiner must consider all relevant evidence. If the offense charged involves the use of force against another person, the relevant evidence to be considered includes, but is not limited to, any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered woman syndrome." (Sec. 2945.371(A), (E), and (F).)

Operation of the bill

Under the bill, if a defendant is charged with an offense involving the use of force against another and the defendant pleads not guilty by reason of insanity to the charge, the defendant may introduce expert testimony of the "battered child syndrome" and expert testimony that the defendant suffered from that syndrome as evidence to establish the requisite impairment of the defendant's reason, at the time of the commission of the offense, that is necessary for a finding that the defendant is not guilty by reason of insanity. The expert testimony must be introduced in accordance with the Ohio Rules of Evidence. (Sec. 2945.392(B).)

The bill expands the duties of an examiner in conducting an evaluation of a defendant's mental condition at the time of the offense charged under a plea of not guilty by reason of insanity. Under the bill, if the offense charged involves the use

of force against another person, the examiner must consider any evidence that the defendant suffered, at the time of the commission of the offense, from the "battered child syndrome." (Sec. 2945.371(F).)

COMMENT

1. In *State v. Koss* (1990), 49 Ohio St.3d 213, the Ohio Supreme Court adopted the term "battered woman syndrome" as a legal term of art referring to the characteristics and symptoms associated with women who are battered by their spouses or significant others.

2. In *State v. Nemeth* (1998), 82 Ohio St.3d 202, 205-206, the Ohio Supreme Court used the term "battered child syndrome" to refer to the psychological and behavioral characteristics of abused children, but the Court recognized that the term encompasses the same characteristics identified under numerous labels and set forth most specifically under the diagnostic criteria of posttraumatic stress disorder.

The Court noted that the term "battered child syndrome" was long ago adopted as a term of art in the medical community as the label for a set of physical symptoms that provide proof of child abuse. The battered child syndrome has been used for over 30 years in this context and has been accepted by the medical and legal community as a means of proving that a child has been abused. Only recently have attempts been made to expand this label to include a set of psychological symptoms or behavioral effects suffered by victims of child abuse. Many courts have been reluctant to allow evidence on the psychological effects of battered child syndrome, because they do not believe that there is sufficient scientific proof that psychological markers can in and of themselves identify a battered or abused child.

The Court noted that identifying an abused child based solely on a psychological profile, however, is an entirely different matter than recognizing that children who have been abused share a set of characteristic psychological symptoms. These symptoms may not be exclusive to abused children, but most abused children demonstrate these symptoms to varying degrees. These symptoms have been well documented and universally noted in the psychiatric and medical community. The Court noted that, unfortunately, that community has not adopted a universal label for these symptoms. According to the Court:

Some experts have tried to incorporate the psychological effects of child abuse under the label of "battered child syndrome"; some distinguish it from the

physical syndrome by calling it "child abuse syndrome"; still others address it as a form of posttraumatic stress disorder or acute stress disorder. See Diagnostic and Statistical Manual of Mental Disorders (4 Ed.1994) 424-431 ("DSM-IV"). It has also been labeled as "characterological sequelae of prolonged victimization," and "traumatic bonding," for example. See Posttraumatic Stress Disorder: DSM-IV and Beyond (1993) 219-220. Regardless of the label, however, the behavioral and psychological characteristics which may manifest in abused children have been universally and consistently recognized in the scientific community since at least 1962. See Kempe, Silverman, Steele, Droegemueller & Silver, The Battered-Child Syndrome (1962), 181 J.Am.Med.Assn. 17, 18-20 (describing the psychological and physiological harm caused by child abuse).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-04-99	p. 511

H0321-I.123/rss