Stephanie Vermeer *Legislative Service Commission*

H.B. 544

125th General Assembly
(As Introduced)

Reps. Raussen, Clancy, Trakas, Cates, Schmidt, Daniels, D. Evans, Raga

BILL SUMMARY

- Requires a court to consider certain factors before setting bail for all persons charged with an offense of violence against a family or household member.
- Creates the Domestic Violence Task Force on Bond Considerations.

CONTENT AND OPERATION

Background

There is not a constitutional right to bail in all cases. The Ohio Constitution states that all persons are bailable except in capital offense cases and certain felony cases.[1] The United States Constitution only prohibits excessive bail, it does not create a right to bail. (United States Constitution Amend. 8.)

Generally, the purpose of bail is to secure the presence of the accused at trial. It is not to be used as a punishment for the crime itself. Setting bail at a high level may not be done as a way to keep a person in jail just because they have been accused of a crime. Rather, bail is supposed to give the defendant a chance to stay out of jail until found guilty, while still assuring the court that the defendant will appear at trial.[2]

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[1] *Ohio Const. Art. I, section 9 reads "All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community.*

[2] *See Workman v. Cardwell, 338 F. Supp. 893, 899 (N.D. Ohio, 1972).*

Current law

Under existing Ohio law when a person is charged with an offense of violence[3] against a family or household member,[4] the court must consider certain factors when setting bail if, at the time of the offense, the person charged:

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[3] *An "offense of violence" means any of the following offenses (R.C. 2901.01(A)(9)):*

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, kidnapping, abduction, extortion, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, burglary under certain circumstances, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidation of crime victim or witness, escape, and improperly discharging a firearm at or into a habitation, a school safety zone, or with the intent to cause harm or panic to persons in a school, in a school building, or at a school function or the evacuation of a school function, endangering children under certain circumstances, and the former offense of felonious sexual penetration;

(2) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in paragraph (1);

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio, any other state, or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense described in paragraph (1), (2), or (3).

[4] *As used in R.C. 2919.251, "family or household member" means any of the following (R.C. 2919.25(F)):*

(1) Any of the following who is residing or has resided with the offender:

(a) A spouse, a person living as a spouse, or a former spouse of the offender;

(b) A parent or a child of the offender, or another person related by consanguinity or affinity to the offender;

(c) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(2) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

- Was already subject to a domestic violence protection order or consent agreement; or

- Was previously convicted of or pleaded guilty to either:

    - A violation of a domestic violence protection order or consent agreement; or

    - Certain violent offenses against a family or household member, including domestic violence.

The factors the court must consider when setting bail are:

- The accused person's history of domestic violence, or other acts of violence;

- The mental health of the accused;

- Whether the accused has a history of violating court orders;

- Whether a person is a threat to anyone else in the community; and

- Whether setting bail at a high level will interfere with treatment or counseling of the accused or their family.

The court must consider these five factors in addition to all other circumstances surrounding the case when deciding how high to set bail. (R.C. 2919.251.)

The bill

The bill removes many of the conditions that must exist before the judge has to consider the five additional factors when the accused is charged with an offense of violence against a family or household member. Instead of requiring the court to consider the additional factors only when the accused has a history of domestic violence offenses, the bill requires the court to consider the factors in all cases in which a person is accused of an offense of violence against a family or household member.

Additionally, the bill expressly requires all persons charged with a domestic violence offense to appear before the court for a determination of bail. (R.C. 2919.251.)

Domestic violence task force on bond considerations

The bill also establishes a task force to create a risk assessment checklist for courts to use when determining the bond for accused persons in domestic violence cases. The task force will have nine members. The President of the Senate and the Speaker of the House of Representatives will each appoint one member, and the Governor will appoint the other seven. The Governor's appointments shall include: a prosecuting attorney, a criminal defense attorney, a criminal psychologist, a retired judge, a representative of the Attorney General, and two experts in domestic violence issues. All appointments must be made within 30 days of the bill's effective date.

The member of the task force representing the House of Representatives will chair the task force, and the member representing the Senate will be the vice-chair. All members will serve without compensation, but will be reimbursed for their actual and necessary expenses.

The task force must do two things: develop a risk assessment checklist for courts to use when determining bond in offense of violence cases involving family or household members, and submit a report regarding that checklist to the President of the Senate, the Speaker of the House of Representatives, and the Minority leaders of both the Senate and the House of Representatives. The report is due to these members within 120 days of the bill's effective date. Upon completion of these two responsibilities, the task force will terminate.

The bill gives the task force the authority to request and receive data from state agencies if the data would enable the task force to perform its duties. The bill requires state agencies to comply with any requests from the task force. If any requested information is confidential, all identifying information is to be removed from the data before it is sent to the task force. (Section 3 of the bill.)

HISTORY

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Introduced	08-31-04	p. 2153

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