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Bill Analysis
Legislative Service Commission

Sub. H.B. 29*

126th General Assembly

(As Reported by S. Judiciary on Criminal Justice)

Reps. Raussen, D. Evans, Distel, Aslanides, Allen, Raga, Driehaus, Trakas, Barrett, Daniels, Carano, McGregor, Reidelbach, Willamowski, Hartnett, Martin, Brinkman, Kearns, C. Evans, Blessing, Schaffer, Harwood, Miller, Beatty, Blasdel, Boccieri, Brown, Bupp, Buehrer, Calvert, Carmichael, Cassell, Chandler, Coley, Collier, DeBose, DeWine, Domenick, Faber, Fende, Fessler, Flowers, Garrison, Gibbs, Gilb, Hagan, Healy, Hoops, Hughes, Key, Kilbane, Latta, Law, Mason, Mitchell, Oelslager, Otterman, S. Patton, T. Patton, Perry, Redfern, Sayre, Schlichter, Schneider, Seaver, Seitz, Setzer, G. Smith, D. Stewart, J. Stewart, Sykes, Taylor, Uecker, Wagoner, Walcher, Webster, White, Widowfield, Wolpert, Woodard, Yates, Yuko

BILL SUMMARY

- Requires that a person charged with committing an offense of violence against a family or household member appear before the court for the setting of bail if: (1) the court is required under existing law to consider specified factors in setting bail for the person, or (2) the arresting officer indicates in a document accompanying the complaint one of several specified circumstances.
- Requires that a court consider certain enumerated factors in setting bail for a person who is charged with committing an offense of violence against a family or household member and who is required under the bill to appear before the court for the setting of bail.
- Authorizes the court to permit a person who is charged with committing an offense of violence against a family or household member and who is required under the bill to appear before the court for the setting of bail to appear by video conferencing equipment.

* *This analysis was prepared before the report of the Senate Judiciary on Criminal Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Authorizes the court to waive the appearance, otherwise required under the bill, for the setting of bail of a person who is charged with committing a misdemeanor offense of violence against a family or household member and to set bail in accordance with specified criteria.
- Urges the Supreme Court to amend the existing Rules of Civil and Criminal Procedure, or to adopt new rules, to acknowledge the exigency of, give priority to, and otherwise encourage the speedy resolution of cases involving domestic violence.

CONTENT AND OPERATION

Existing law

Factors to be considered in the setting of bail--duty to consider

Under existing R.C. 2919.251(A), a court must consider a list of specific factors, in addition to any other circumstances that it may take into account and notwithstanding the provisions of the Criminal Rules that pertain to the setting of bail, before setting bail for a person who is charged with the commission of any "offense of violence" if the alleged victim was a "family or household member" at the time of the offense and either of the following applies:

(1) The person charged, at the time of the alleged offense, was subject to the terms of a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or 3113.31.

(2) The person previously was convicted of or pleaded guilty to any of the following (see **COMMENT** 1, 2, and 3):

(a) A violation of R.C. 2919.25 (domestic violence) or a violation of R.C. 2919.27 (violation of a protection order) involving a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or R.C. 3113.31;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to either R.C. 2919.25 or 2919.27;

(c) A violation of R.C. 2909.06 (criminal damaging or endangering), 2909.07 (criminal mischief), 2911.12 (burglary), or 2911.211 (aggravated trespass) if the victim of the violation was a family or household member at the time of the violation;

(d) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is substantially similar to R.C. 2909.06, 2909.07, 2911.12, or 2911.211 if the victim of the violation was a family or household member at the time of the commission of the violation;

(e) Any offense of violence if the victim of the offense was a family or household member at the time of the offense.

Factors to be considered

The factors that the court must consider in setting bail in the circumstances described above are (R.C. 2919.251(A)):

(1) Whether the person has a history of domestic violence or a history of other violent acts;

(2) The mental health of the person;

(3) Whether the person has a history of violating the orders of any court or governmental entity;

(4) Whether the person is potentially a threat to any other person;

(5) Whether setting bail at a high level will interfere with any treatment or counseling that the person or the family of the person is undergoing (see **COMMENT 6**).

Setting of bail schedule

Existing law authorizes any court with jurisdiction over charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense to set a schedule for bail to be used in cases involving those offenses. A schedule so set must require that a judge consider all of the factors listed above under "**Factors to be considered**" and may require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule. (R.C. 2919.251(C).)

Operation of the bill

Required appearance for the setting of bail

The bill generally requires that a person charged with committing any "offense of violence" against a "family or household member" (see **COMMENT 1**

and 2) appear before the court for the setting of bail if any of the following applies (R.C. 2919.251(A)):

(1) Any circumstance specified in (1) or (2)(a) to (e) of "**Factors to be considered in the setting of bail-duty to consider**," under "**Existing law**," above, applies;

(2) The arresting officer indicates in a police report or other document accompanying the complaint any of the following: (a) that the arresting officer observed on the alleged victim objective manifestations of "physical harm" (see **COMMENT 4**) that the arresting officer reasonably believes are a result of the alleged offense, (b) that the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon or dangerous ordnance (see **COMMENT 5**), or (c) that the arresting officer reasonably believes that the person presents a credible threat of "serious physical harm" (see **COMMENT 4**) to the alleged victim or to any other person if released on bail before trial.

The bill allows the court, on its own motion or on the motion of a party, to permit a person required under the provision described above to appear before the court for the setting of bail to appear by video conferencing equipment on whatever terms the court may direct (R.C. 2919.251(D)(1)).

Under the bill, if the court believes that the appearance in person or by video conferencing equipment of a person who is required under the provision described above to appear before the court for the setting of bail is impracticable, and if the offense charged is a misdemeanor, the court may waive the appearance and release the person on bail. If the court waives the appearance, it must release the person on bail set in accordance with its schedule for bail established under existing law (see below), or, if the court has not established such a bail schedule, it must release the person on one or both of the following types of bail in an amount set by the court: (1) a bail bond secured by a cash deposit of 10% of the amount of the bond or (2) a surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the accused. (R.C. 2919.251(D)(2).)

Factors to be considered in setting bail

The bill expands the circumstances in which the existing bail factor consideration provision applies and revises and expands the factors that must be considered. Under the bill, a court must consider, to the extent that information about any of the factors is available to the court, 11 factors, in addition to any other circumstances considered by the court and notwithstanding the provisions of the Criminal Rules that pertain to the setting of bail, when setting bail for a person

who is charged with committing an offense of violence against a family or household member and who appears before the court under the bill's provisions (see "**Required appearance for the setting of bail,**" above) for the setting of bail. These factors are (R.C. 2919.251(B) and (E)):

(1) Whether the person has a history of domestic violence or a history of other violent acts (existing law);

(2) The mental health of the person (existing law);

(3) Whether the person has a history of violating the orders of any court or governmental entity (existing law);

(4) Whether the person is potentially a threat to any other person (existing law);

(5) Whether the person has access to "deadly weapons" or a history of using "deadly weapons" (see **COMMENT 5**) (replacement for existing "interference with treatment or counseling" factor);

(6) Whether the person has a history of abusing alcohol or any controlled substance, as defined in the existing Controlled Substance Law--not in the bill (new);

(7) The severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim (new);

(8) Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending (new);

(9) Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including but not limited to, stalking, surveillance, or isolation of the alleged victim (new);

(10) Whether the person has expressed suicidal or homicidal ideations (new);

(11) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint (new).

Under the existing provision regarding a court's setting of a bail schedule regarding charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense, if a court sets a schedule, the schedule must require that a judge consider all of the factors in the bill's modified and expanded list of factors (R.C. 2919.251(C)).

Miscellaneous

The bill states that the requirement it enacts that certain persons appear before the court for the setting of bail neither creates a right in a person to appear before the court for the setting of bail nor prohibits a court from requiring any other person charged with an offense of violence who is not required by the bill to appear in court to appear before the court for the setting of bail (R.C. 2919.251(D)(3)).

The bill species that the General Assembly urges the Supreme Court to amend the existing Rules of Civil and Criminal Procedure, or to adopt new rules, to acknowledge the exigency of, give priority to, and otherwise encourage the speedy resolution of cases involving domestic violence (Section 3).

COMMENT

1. Under existing law, as used in the Revised Code, "offense of violence" means any of the following (R.C. 2901.01(A)(9)--not in the bill):

(a) A violation of R.C. 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.15 (permitting child abuse), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), 2903.22 (menacing), 2905.01 (kidnapping), 2905.02 (abduction), 2905.11 (extortion), 2907.02 (rape), 2907.03 (sexual battery), 2907.05 (gross sexual imposition), 2909.02 (aggravated arson), 2909.03 (arson), 2909.24 (terrorism), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2917.01 (inciting to violence), 2917.02 (aggravated riot), 2917.03 (riot), 2917.31 (inducing panic), 2919.25 (domestic violence), 2921.03 (intimidation), 2921.04 (intimidating an attorney, victim, or witness in a criminal case), 2921.34 (escape), or 2923.161 (improperly discharging a firearm at a habitation or under circumstances related to a school), of division (A)(1), (2), or (3) of R.C. 2911.12 (certain forms of burglary), or of division (B)(1), (2), (3), or (4) of R.C. 2919.22 (certain forms of endangering children) or felonious sexual penetration in violation of former R.C. 2907.12;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States creating offenses substantially equivalent to those listed in the preceding paragraph;

(c) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or 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;

(d) A conspiracy or attempt to commit, or complicity in committing, any offense listed in the preceding three paragraphs.

2. R.C. 2919.25 (not in the bill) defines "family or household member" for purposes of that section, R.C. 2919.251, and R.C. 2919.26 as any of the following:

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

(i) A spouse, a "person living as a spouse" (see below), or a former spouse of the offender;

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

(iii) 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.

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

The statute defines "person living as a spouse" as a person who is living or has lived with the offender in a common law marital 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 commission of the act in question.

3. Existing R.C. 2919.26 provides for temporary protection orders when a complaint has been filed alleging criminal damaging or endangering, criminal mischief, burglary, aggravated trespass, an offense of violence, or any comparable municipal ordinance violation committed against a family or household member. Existing R.C. 3113.31 provides for protection orders or consent agreements when a petition has been filed alleging domestic violence.

4. Under existing law, as used in the Revised Code (R.C. 2901.01(A)):

(a) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.

(b) "Serious physical harm to persons" means any of the following: (i) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (ii) any physical harm that carries a substantial risk of death, (iii) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (iv) any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement, or (v) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

5. As used in this provision, "dangerous ordnance" and "deadly weapon" have the same meanings as in the existing Weapons Control Law (R.C. 2919.251(E), by reference to existing R.C. 2923.11--not in the bill).

6. Existing law contains similar provisions that apply regarding certain menacing-related or stalking-related offenses when the person charged is not a family or household member (as defined in R.C. 2919.25) of the alleged victim. Under those provisions, except when the complaint involves a person who is a family or household member, if a person is charged with committing the offense of aggravated menacing, menacing by stalking, menacing, or aggravated trespass or a violation of a municipal ordinance substantially similar to one of those offenses and if the person, at the time of the alleged violation, was subject to the terms of a protection order issued pursuant to R.C. 2903.213, 2933.08, or 2945.04 or previously had been convicted of or pleaded guilty to any of those offenses or municipal ordinance violations that involves the same complainant, the court must consider all of the following, in addition to any other circumstances considered by the court and notwithstanding any provisions to the contrary contained in Criminal Rule 46, before setting the amount and conditions of the bail for the person: (a) whether the person has a history of violence toward the complainant or a history of other violent acts, (b) the person's mental health, (c) whether the person has a history of violating the orders of any court or governmental entity, (d) whether the person is potentially a threat to any other person, or (e) whether setting bail at a high level will interfere with any treatment or counseling the person is undergoing.

Any court with jurisdiction over charges alleging the commission of any of the offenses or ordinance violations described in the preceding paragraph may set a schedule for bail to be used in cases involving those violations. The schedule must require that a judge consider all of the factors listed in the preceding paragraph and may require judges to set bail at a certain level or impose other reasonable conditions related to a release on bail or on recognizance if the history

of the alleged offender or the circumstances of the alleged offense meet certain criteria in the schedule. (R.C. 2903.212--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-01-05	p. 179
Reported, H. Judiciary	04-21-05	p. 698
Passed House (98-0)	04-27-05	pp. 722-723
Reported, S. Judiciary on Criminal Justice	---	---

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