



H.B. 436

126th General Assembly
(As Introduced)

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BILL SUMMARY

- Expands the criminal and civil domestic violence laws to also apply when the victim of the offense was a child under the age of 18 with whom the offender has had or has a dating relationship.
- Includes a foster parent in the definition of "family or household member" in the criminal and civil domestic violence laws.
- Requires that if a child who was 14 years of age or older at the time of the commission of the act charged is alleged to be a delinquent child, the juvenile court at a hearing must transfer that child's case for criminal prosecution if (1) the child is charged with aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, or negligent homicide, (2) there is probable cause to believe that the child committed the act charged, and (3) the child previously was adjudicated a delinquent child for committing an act that would be domestic violence if committed by an adult, and the victim of that previous act is also the victim of the offense for which the child is currently charged.

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CONTENT AND OPERATION

Inclusion of certain children and foster parents as victims under the domestic violence laws

The criminal offense of domestic violence

Current law. Current law prohibits a person from doing any of the following (R.C. 2919.25):

(1) Knowingly causing or attempting to cause physical harm to a family or household member (a violation of which is a M1, F4, or F3);

(2) Recklessly causing serious physical harm to a family or household member (a violation of which is a M1, F4, or F3);

(3) By threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member (a violation of which is a M4, M2, or M1).

A violation of any of these prohibitions is the offense of "domestic violence."

Current law defines a "family or household member" as meaning any of the following persons (R.C. 2919.25(F)(1)):

(1) One of the following persons who is residing or has resided with the offender;

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

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

(c) A parent or child of a spouse, person living as a spouse, or a 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.

The bill. The bill expands the offense of domestic violence to also apply when the victim of the offense is a child under the age of 18 with whom the offender has had or has a dating relationship (see "**Definition of 'dating relationship'**," below). Thus, under the bill a person is prohibited from doing any of the following (R.C. 2919.25):

(1) Knowingly causing or attempting to cause physical harm to a family or household member *or to a child who is less than 18 years of age and with whom the person has had or has a dating relationship* (a violation of which is a M1, F4, or F3);

(2) Recklessly causing serious physical harm to a family or household member *or to a child who is less than 18 years of age and with whom the person has had or has a dating relationship* (a violation of which is a M1, F4, or F3);

(3) By threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member *or to a child who is less than 18 years of age and with whom the person has had or has a dating relationship* (a violation of which is a M4, M2, or M1).

The bill also adds a foster parent to the definition of "family or household member," so that a "family or household member" means, among other persons, a parent, *foster parent*, or a child of the offender, or another person related by consanguinity or affinity to the offender (R.C. 2919.25(F)(1)(a)(ii)).

Setting of bail when the offender is charged with an offense of violence against a family or household member

Current law. Generally, current law requires that if a person is charged with the commission of any offense of violence that person must appear before the court for the setting of bail if the victim of that offense was a family or household member at the time of the offense and if any of the following applies (R.C. 2919.251(A)):¹

¹ "Offense of violence" means any of the following: (1) a violation of R.C. 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2903.13, 2903.15, 2903.21, 2903.211, 2903.22, 2905.01, 2905.02, 2905.11, 2907.02, 2907.03, 2907.05, 2909.02, 2909.03, 2909.24, 2911.01, 2911.02, 2911.11, 2917.01, 2917.02, 2917.03, 2917.31, 2919.25, 2921.03, 2921.04, 2921.34, or 2923.161, R.C. 2911.12(A)(1), (2), or (3), or R.C. 2919.22(B)(1), (2), (3), or (4) or the former offense of felonious sexual penetration, (2) a

(1) The person charged, at the time of the alleged offense, was subject to a temporary or civil protection order, as described below in "Temporary protection order available for certain victims" and "Civil protection order available for a victim of domestic violence" or previously was convicted of or pleaded guilty to specified offenses, such as domestic violence;

(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 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;

(c) That the arresting officer reasonably believes that the person presents a credible threat of serious physical harm to the alleged victim or to any other person if released on bail before trial.

The bill. The bill additionally specifies that if the victim of the offense of violence was a child who is less than 18 years of age and with whom the offender has had or has a dating relationship the bail provisions described above in "Current law" apply (R.C. 2919.251).

Temporary protection order available for certain victims

Current law. Current law allows a person who is the victim of an offense and who is the family or household member of the offender who is alleged to have committed that offense when the offense is criminal damaging or endangering, criminal mischief, burglary, aggravated trespass, any municipal ordinance that is substantially similar to one of those offenses, or any offense of violence to apply for a temporary protection order as a pretrial condition of the release of the offender. The court may grant the requested temporary protection order if it finds that the safety and protection of the complainant, alleged victim, or any other

violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States, substantially equivalent to any section, division, or offense listed in (1), above, (3) 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, or (4) a conspiracy or attempt to commit, or complicity in committing, any offense listed in (1), (2), or (3), above.

family or household member of the alleged offender may be impaired by the continued presence of the alleged offender. The order may contain terms designed to ensure the safety and protection of the complainant, alleged victim, or the family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant, alleged victim, or the family or household member.

If a temporary protection order is granted, the order lasts only until the disposition of the criminal proceeding or until a civil protection order or consent agreement is granted, as described below in "**Civil protection order available for a victim of domestic violence.**" (R.C. 2919.26.)

The bill. The bill additionally specifies that if the victim of an offense specified above under "**Current law**" for which a temporary protection order may be granted was a child who is less than 18 years of age and with whom the alleged offender has had or has a dating relationship, a temporary protection order described above in "**Current law**" is also available for that victim. In such a case, a parent or adult household member may file the request for the temporary protection order. (R.C. 2919.26.)

Civil protection order available for a victim of domestic violence

Current law. Under current law, a victim of domestic violence may apply for a civil protection order or consent agreement.² The petition for a protection order must contain an allegation that the respondent has engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence; the relationship of the respondent to the petitioner, and to the victim if other than the petitioner; and a request for relief. (R.C. 3113.31(C).) If a court grants a protection order or consent agreement, the order or agreement may contain any of the following provisions (R.C. 3113.31(E)(1)):

(1) A direction that the respondent refrain from abusing the family or household members;

² For purposes of a civil protection order, "domestic violence" is defined as the occurrence of one or more of the following acts against a family or household member (R.C. 3113.31(A)(1)): (1) attempting to cause or recklessly causing bodily injury, (2) placing another person by the threat of force in fear of imminent physical harm or committing a violation of R.C. 2903.211 (the offense of menacing by stalking) or R.C. 2911.211 (the offense of aggravated trespass), or (3) committing any act with respect to a child that would result in the child being an abused child.

(2) A grant of possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or an order to the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent and the petitioner or other family or household member;

(3) When the respondent has a duty to support the petitioner or other family or household member living in the residence and the respondent is the sole owner or lessee of the residence, a grant of possession of the residence to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternative housing;

(4) A temporary allocation of parental rights and responsibilities for the care of, or an establishment of temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights;

(5) A requirement that the respondent maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if the respondent has a duty to support the petitioner or family or household member;

(6) A requirement that the respondent, petitioner, victim of domestic violence, or any combination of those persons, seek counseling;

(7) A requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(8) A grant of other relief that the court considers equitable and fair, including, but not limited to, an order that the respondent permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property.

A protection order or consent agreement approved by a court under R.C. 3113.31 is valid for a specific time period, not to exceed five years from the date of issuance or approval (R.C. 3113.31(E)(3)(a)).

Current law defines a "family or household member" for purposes of the law dealing with civil protection orders similarly to the definition that is used for the offense of domestic violence (R.C. 3113.31(A)(3)):

(1) One of the following persons who is residing or has resided with the respondent:

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

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

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

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

The bill. As the bill expands the offense of domestic violence to also apply when the victim of the offense is a child under the age of 18 with whom the respondent has had or has a dating relationship, the bill also allows a victim of domestic violence who is a child under the age of 18 with whom the respondent has had or has a dating relationship to apply for a civil protection order or consent agreement under the procedure discussed above in "**Current law.**" The bill also expands the definition of "family or household member" used in those provisions of law to include a foster parent. (R.C. 3113.31.)

Shelters for domestic violence victims

Current law. R.C. 3113.33 to 3113.40 establishes a funding mechanism for shelters for domestic violence victims. Under these provisions, "domestic violence" means attempting to cause or causing bodily injury to a family or household member by threat of force in fear of imminent physical harm (R.C. 3113.33(A).) Current law defines a "family or household member" similarly to the definition in the offense of domestic violence and the domestic violence civil protection statute as meaning one of the following (R.C. 3113.33(B)):

(1) Any of the following who is residing or has resided with the person committing the domestic violence:

(a) A spouse, a person living as a spouse, or a former spouse of the person committing the domestic violence;

(b) A parent or child of the person committing the domestic violence, or another person related by consanguinity or affinity to the person committing the domestic violence;

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

(d) The dependents of any person listed in (a), (b), or (c), above.

(2) The natural parent of any child of whom the person committing the domestic violence is the other natural parent or is the putative other natural parent.

The bill. The bill also includes a child under the age of 18 with whom the person committing the domestic violence has had or has a dating relationship in the definition of domestic violence in the law governing funding for domestic violence shelters. The bill also expands the definition of "family or household member" in that law to include a foster parent. (R.C. 3113.33(A) and (B)(1)(b).)

Definition of "dating relationship"

The bill specifies that a "dating relationship" means a social relationship of a romantic nature. The court may consider the following factors in determining whether a dating relationship exists or existed between the offender, respondent, or person committing the domestic violence (as applicable) and the victim (R.C. 2919.25(F)(3), 3113.31(A)(6), and 3113.33(E)):

- (1) The nature of the relationship;
- (2) The length of time the relationship has existed or did exist;
- (3) The frequency of interaction between the parties;
- (4) The time since termination of the relationship, if applicable.

Mandatory transfer of certain children for criminal prosecution

The bill

The bill requires that if a child is alleged to be a delinquent child the juvenile court at a hearing must transfer that child's case for criminal prosecution if the child is charged with a violation of R.C. 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.041 (reckless homicide), or 2903.05 (negligent homicide) (collectively termed a "category three offense"), there is probable cause to believe

that the child committed the act charged, and both of the following apply (R.C. 2152.02(DD), 2152.10(A)(4), and 2152.12(A)(1)(b)):³

(1) The child was 14 years of age or older at the time of the commission of the act charged.

(2) The child previously was adjudicated a delinquent child for committing an act that would be a violation of R.C. 2919.25 (domestic violence) if committed by an adult, and the victim of that previous act is also the victim of the category three offense for which the child is currently charged.

Current law

With respect to the offenses of aggravated murder and murder, current law requires that if a child was 16 or 17 years of age at the time of the commission of aggravated murder (R.C. 2903.01) or murder (R.C. 2903.02) and there is probable cause to believe that the child committed the act, the child's case must be transferred for criminal prosecution. If the child was 14 or 15 at the time of the commission of aggravated murder or murder and there is probable cause to believe that the child committed the act charged, the child's case must be transferred for criminal prosecution only if the child was previously adjudicated delinquent for committing aggravated murder, murder, voluntary manslaughter, rape, kidnapping, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that is a felony of the first degree, or the previously existing offense of felonious sexual penetration, and was committed to the legal custody of the Department of Youth Services ("DYS") upon the basis of that adjudication. If the child's case is not required to be transferred, the case may be transferred as described in the final paragraph of this section or the child may be subject to either a mandatory serious youthful offender disposition or a traditional juvenile disposition in juvenile court. (R.C. 2152.10(A)(1), 2152.11(H) (*not in the bill*), and 2152.12(A).)

With respect to the offenses of voluntary manslaughter (R.C. 2903.03) and first degree involuntary manslaughter when it is committed by a child who causes the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony (R.C. 2903.04(A)), current law only requires the child's case be transferred for criminal prosecution if the child was 16 or 17 at the time of the commission of the act, there is probable cause to believe that the child committed the act charged, and either of the following applies (R.C. 2152.10(A)(2) and 2152.12(A)):

³ See **COMMENT** for an explanation of other instances that require mandatory transfer of a child's case for criminal prosecution.

(1) The child previously was adjudicated a delinquent child for committing aggravated murder, murder, attempted aggravated murder, attempted murder, voluntary manslaughter, rape, kidnapping, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that is a felony of the first degree, or the previously existing offense of felonious sexual penetration and was committed to the legal custody of DYS upon the basis of that adjudication.

(2) The child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

If current law does not require the transfer for criminal prosecution of the child's case for commission of voluntary manslaughter or first degree involuntary manslaughter, the juvenile court may transfer the case, as described in the final paragraph of this section, or the child may be subject to a mandatory serious youthful offender disposition, a discretionary serious youthful offender disposition, or a traditional juvenile offender disposition (R.C. 2152.11(H)).

Under current law, if a child commits third degree involuntary manslaughter (R.C. 2903.04(B)) or reckless homicide (R.C. 2903.041), also a felony of the third degree if committed by an adult, the child is either subject to a discretionary serious youthful offender disposition or a traditional juvenile disposition (R.C. 2152.11(H)). In addition, the juvenile court may transfer the case for criminal prosecution as described in the final paragraph of this section.

For the offense of negligent homicide (R.C. 2903.05), a misdemeanor of the first degree if committed by an adult, a child who is adjudicated delinquent for committing negligent homicide is not subject to transfer for criminal prosecution or a mandatory or discretionary serious youthful offender disposition. Instead a juvenile court has broad discretion in devising a disposition for such a child. For example, the juvenile court can place the child in a detention facility for up to 90 days, place the child on some form of community control, commit the child to the custody of the court, require the child to not be absent from school in excess of a specified number of days, impose a fine not to exceed \$250, or order the child to pay costs or restitution. (R.C. 2152.19 and 2152.20, *not in the bill.*)

Under current law, a child may be transferred for prosecution in a court of common pleas if the juvenile court finds that the child is 14 years of age or older, is charged with an act that would be a felony if committed by an adult, there is probable cause to believe that the child committed the act, the child is not amenable to care or rehabilitation within the juvenile system, and the safety of the community may require that the child be subject to adult sanctions (R.C. 2152.10(B) and 2152.12(B)).

COMMENT

Current law requires the mandatory transfer of a child's case for criminal prosecution in the following circumstances (R.C. 2152.10(A)(1), (2), and (3) and 2152.12(A)):

(1) The child is charged with a violation of R.C. 2903.01 (aggravated murder) or 2903.02 (murder) or an attempt to commit aggravated murder or murder, there is probable cause to believe that the child committed the act charged and either (a) the child was 16 years of age or older at the time of the act charged or (b) the child was 14 or 15 years of age at the time of the act charged and previously was adjudicated a delinquent child for committing an act that is aggravated murder, murder, voluntary manslaughter, rape, kidnapping, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that is a felony of the first degree, or the previously existing offense of felonious sexual penetration, and was committed to the legal custody of the Department of Youth Services ("DYS") upon the basis of that adjudication.

(2) The child is 16 years of age or older at the time of the commission of the act charged, is charged with voluntary manslaughter, rape, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that is a felony of the first degree, or the previously existing offense of felonious sexual penetration, there is probable cause to believe that the child committed the act charged, and either (1) the child previously was adjudicated a delinquent child for committing aggravated murder, murder, attempted aggravated murder, attempted murder, voluntary manslaughter, rape, kidnapping, aggravated arson, aggravated robbery, aggravated burglary, involuntary manslaughter that is a felony of the first degree, or the previously existing offense of felonious sexual penetration and was committed to the legal custody of DYS upon the basis of that adjudication or (2) the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged.

(3) If the child's case is transferred for criminal prosecution and the child subsequently is convicted of or pleads guilty to a felony in that case or if the child is adjudicated a delinquent child for the commission of an act, has a serious youthful offender dispositional sentence imposed for that act, and the adult portion of the dispositional sentence is invoked, the child is no longer considered to be a child in any case in which a complaint is filed against the child.

(4) A complaint is filed against a child who is eligible for a discretionary transfer and who previously was convicted of or pleaded guilty to a felony in a case that was transferred to a criminal court.

(5) A complaint is filed against the child who is domiciled in another state alleging that the child is a delinquent child for committing an act that would be a felony if committed by an adult, and, if the act charged had been committed in that other state, the child would be subject to criminal prosecution as an adult under the law of that other state without the need for a transfer of jurisdiction from a juvenile, family, or similar non-criminal court to a criminal court.

HISTORY

ACTION	DATE
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