



House Bill 3 Sponsor Testimony
House Criminal Justice Committee
May 22, 2019
Representative Janine Boyd
9th House District

Good afternoon Chairman Lang, Vice Chair Plummer, Ranking Member Leland, and members of the Criminal Justice Committee. It's my honor to share my testimony with you today as joint sponsor of House Bill 3-Aisha's Law, with Representative Carruthers.

Please allow me the opportunity to tell you a bit about Aisha Fraser and the tragedy that sparked this bill and the wide range of support and input it's received. For those who are not aware, Aisha Fraser, first and foremost, was a mother of two young children; an elementary school teacher; daughter to a loving mother and father; and a lifelong resident of the city of Shaker Heights in my district. She was also married to former state lawmaker, attorney, and judge, Lance Mason for ten years of her young life. In 2014, Mason was arrested for biting, choking, and punching Aisha repeatedly in the face, breaking her orbital bone in front of their two small children in the car. He then forced her out of the car and left her there. He was convicted of domestic violence and felonious assault in 2015. Part of his plea deal was that he serve an abbreviated term in prison. He only served nine months of his twenty-four month sentence. Aisha

Fraser filed for divorce from her abusive husband in 2015. On November 17, 2018, her life was brutally cut short when she was stabbed repeatedly to death, once again in her car in front of their small children- as reported by police- by her ex-husband, Lance Mason.

For the past six-plus months I have met with stakeholders across the fields of criminal justice, program experts, researchers, victims and survivors, victim advocacy and support, law enforcement, and beyond. These interested parties meetings informed me of best-practices from other states and lived-experiences that victims worked through where there was support and instances where there was not support. All of that input can be found in this bill.

Aisha's Law creates a continuum of protections for victims of intimate partner violence, by updating and modernizing Ohio's Intimate Partner Violence laws; implementing a standardized and valid lethality assessment screening tool; immediately connecting law enforcement and victims with community resources that support families in crisis/victims of violence; and providing improved recourse in the courts.

HB 3 is not only smart policy, it is informed by the individuals and groups who are on the front-lines dealing with the epidemic of domestic violence. This bill is a model of leveraging regionalism and inter-sector collaboration.

If this bill had been in place the first time she experienced domestic violence I believe Aisha Fraser would still be alive. The best way for me to explain this bill is to take it step by step and discuss the various aspects and where they come from.

1. **Adoption of a Lethality Screening Tool:** The Attorney General's office shall create rules that set criteria for a validated and evidence-based lethality screening tool such as the "Domestic Violence Lethality Screen for First Responders" developed by the Maryland Network Against Domestic Violence which is adapted from Dr. Jacquelyn Campbell's Danger Assessment, the "Danger Assessment for Law Enforcement" developed by the Jeanne Geiger Crisis Center, or other lethality screening tools endorsed by the United States Department of Justice".
2. **Creation of a Domestic Violence High Risk Team (DVHRT):** Municipalities at various localities, municipalities, or regions shall create a Domestic Violence High Risk Team (DVHRT). The DVHRT framework is built on four fundamental strategies: early identification of high-risk cases through the use of risk assessment, engagement of a multi-disciplinary team, ongoing monitoring and management of high-risk offenders, and victim services. The Domestic Violence High Risk Team creates individualized intervention plans that incorporate the entire domestic violence response system with the goals of increasing victim safety and holding offenders accountable.
3. **Amend Peace Officer Training Curriculum:** Ohio Peace Officer Training Association shall add ongoing training on Domestic Violence intervention techniques and training on properly using the lethality screening tool.
4. **Strangulation:** If strangulation is reported, the victim is automatically diverted to the DVHRT
5. **Child Endangerment:** The perpetrator will be charged with child endangerment when children are present or in the home. Does not need to be intentional.
6. **Protection Order Covering Children:** When a victim requests a protection order it covers all minors in the care of the victim for the maximum length- 5 years
7. **Prosecutorial Direction:** Encourages prosecutors to adopt Non-coercive No-drop policies
8. **Improve Time a Protection Order is Signed and Effective:** Courts shall create a system of 24/7 access to getting a protection order signed
9. **Prior Acts of Domestic Violence:** Adding DV as a prior act to be able to charge an individual with aggravated murder.
10. **Rules of Evidence-Hearsay Exception:** Making an exception to the hearsay rule for DV cases. This would expand certain written or recorded statements of unavailable victims which describe past infliction or threat of abuse by the defendant admissible in civil or criminal proceedings. In addition, this would also make admissible text messages, social media posts, recorded video chat, or other electronically recorded statements by a victim who does not appear at trial. California's statute addresses issues of trustworthiness and also requires the

prosecution to give the defense the particulars of the statement in order to let them prepare to respond.

- Make text messages, social media posts, recorded video chat, or other electronically recorded statements admissible if the victim is unavailable.
- Allow victims past statements from a trustworthy third party about their then-existing fear of another behavior (“State of Mind”), abuse, or fear of death admissible in DV cases if the victim is unavailable

11. Rules of Evidence-Character Evidence, Prior Acts, or Prior Convictions: Permits use of evidence of a defendant’s prior commission of DV to show propensity (patters) to commit those acts in the probative value if the evidence is not outweighed by unfair prejudice, misleading, or confusing the jury.

- Permits evidence of prior arrests and misdemeanor convictions as evidence. Currently, only Felony convictions can be admissible
- Permit call logs of dispatch calls to be introduced as evidence in DV cases in order to show history of DV calls.

Thank you for your patience as I tried to be as concise as possible in my overview of the bill. The final bill dashboard seven, meaning it’s been through major changes seven times. It is now a total of 96 pages. I have even made a presentation to the Supreme Courts Committee on Rules and Procedures, Subcommittee on Rules of Evidence. I look forward to answering your questions or elaborating on any part of this bill.

No-Drop Prosecution Policies: Hard, Soft, & Non-coercive

No-drop policies limit the discretion of the prosecutor to drop/dismiss a case once formal charges have been filed.

No-drop policies limit the victim's ability to drop/withdraw charges.

No-drop policies emphasize that once charges are filed, the STATE, not the victim, is the party responsible for pursuing prosecution. Its goal is remove that burden from the victim.

The policy also conveys the state's stance that domestic violence is a serious crime.

There are "hard" and "soft" no-drop policies.
"Non-coercive" is a compromise.

These are fluid definitions – not defined terms.

1.) "Hard" no-drop policies require a prosecutor to proceed with prosecution regardless of victim cooperation. Prosecutors in this category often issue subpoenas to those victims to compel them to testify. Some judges will issue warrants if they do not appear.

EXAMPLES:

San Diego County, CA: Policy states that the prosecutor will request an arrest warrant if subpoenaed victim does not appear. HOWEVER, in practice, specially-trained domestic violence prosecutor will not request a warrant until s/he determines that victim testimony is absolutely necessary. Here, other corroborating evidence (neighbors' or relatives' testimony, 911 calls, photographs, medical records) is relied upon to prove the state's case.

Duluth, MN: Prosecutors almost always pursue a case regardless of victim's wishes. They regularly subpoena victims to protect the victim by making it clear that it is the state's choice to prosecute. They also make use of various types of evidence (excited utterances, evidence of other conduct, present sense impressions).

2.) "Soft" no-drop policies require the prosecutor to make a good faith effort in gaining the victim's cooperation – or a full explanation why not – before charges are dismissed.

EXAMPLE:

Jefferson County, KY: The policy recommends that the prosecutor request a continuance/postponement when victim does not want to participate, and then prosecutor must obtain a statement from the victim as to why she wants to withdraw and *if she was pressured to do so*. Then, the county's domestic unit (chief prosecutor, paralegals, and an advocate) must give its consent before the prosecutor can plea-bargain or recommend dismissal of the charges.

3.) “Non-coercive:” a compromise between the two policies and is tailored to the jurisdiction.

EXAMPLE:

Marion County, IN: prosecutors inform the victim that they usually employ a no-drop policy, but that there are exceptions based on the circumstances.

- Victim is told that if she wishes to withdraw the charges, she must speak first to a victim’s advocate or prosecutor.
- Victim is told that certain categories of crimes or offenders are removed from considerations for dismissals (including defendants with a prior conviction, if they have been sent a warning letter, if they have another case pending for an act of violence against the same victim, or if they are on probation and subject to a violation for a new offense).
- No case is dropped before initial hearing.
- If victim still requests a drop, she must be advised about the increased risk of being victimized.
- Victim may also be asked to watch a video program about domestic violence and/or attend a victims’ support group meeting.
- If victim continues to insist on the drop, she will be permitted to sign a “drop form,” which is submitted to the court at the next hearing and the judge takes it into consideration for a **90-day period**.
- *If no further violence happens during this period, prosecutor will file motion to dismiss.*

