

THE OHIO ASSOCIATION
OF
CRIMINAL DEFENSE LAWYERS

2/13/20

OPPONENT TESTIMONY ON HOUSE BILL 3

Chairman Lang, Vice Chair Plummer, and Ranking Member Leland:

On behalf of OACDL, we want to thank the sponsors and members of this Committee for adopting the substitute bill, which eliminates several significant concerns we had regarding slanted changes to the Rules of Evidence and an expansion of the death penalty included in previous versions of HB3. We continue to vigorously oppose any attempt to change the Rules of Evidence that would encroach upon the fundamental rights of the accused in order to make prosecution of a certain type of case easier for the State.

With regard to the current bill, we understand and appreciate the efforts of the sponsors to provide additional support and protection for victims of domestic violence from truly violent offenders. However, we continue to have two major concerns with the substitute bill – the provisions surrounding aggravated murder and strangulation.

We strongly oppose expanding the definition of aggravated murder beyond its current form. The distinction between aggravated murder and murder is as old as the common law – in order for murder to be of the worst form, it must involve prior calculation and design. In other words, a person who pre-plans the murder and acts with purposeful intent to kill is the worst of the worst offender, which is distinguishable from murder committed in the heat of the moment or without pre-planning. This bill would continue to degrade this distinction and allow aggravated murder charges (and the significantly increased penalties) for a murder that did not involve prior calculation and design. We strongly oppose such an expansion.

Further, the provision in the bill that would add strangulation to the definition of domestic violence is significantly overbroad and again, degrades certain basic aspects of our system. It is a basic element of the law in Ohio that an assault (or domestic violence assault) does not occur unless physical harm or serious physical harm is committed. This bedrock principle therefore only criminalizes the causing of harm, however slight, to another. This provision expressly eliminates that definition and instead proposes a vague and overbroad definition of strangulation that could sweep in the most innocuous conduct and make it a serious felony. This is a double whammy – not only could a person be convicted of domestic violence without having caused physical harm, but would also be subject to serious felony punishment. The physical harm standard has served Ohio well for decades and should not be so hastily discarded.

Blaise Katter, Public Policy Chair, OACDL