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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 3  
133<sup>rd</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 3's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. Boyd and Carruthers

**Local Impact Statement Procedure Required:** Yes

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### Highlights

- Local law enforcement agencies could incur up to an estimated \$4.5 million annually statewide to provide additional domestic violence training, and to dedicate staff time and expenses to domestic violence high risk teams.
- It appears that the likely effect of the bill's endangering children provision generally will not be to create new criminal cases, but to add to the number of charges for which an alleged domestic violence offender may be prosecuted, convicted, and sanctioned. This may increase to some degree the time and effort that county and municipal criminal justice systems currently expend to process certain domestic violence cases, but this in all likelihood can more or less be absorbed utilizing existing staff and available funding.
- Courts of common pleas will see increased operational expenses to meet the bill's requirement to have a judge or magistrate available to receive petitions for protection orders 24 hours per day, seven days per week. The magnitude of this increase is unknown.
- In the trial phase of certain aggravated murder cases and death penalty eligible aggravated murder cases, county criminal justice systems (prosecutors, indigent defense counsel, and courts of common pleas) will experience a potentially significant increase in costs and workload.
- The Office of the State Public Defender may incur additional expenditures in order to reimburse counties for the provision of legal representation to indigent defendants in death penalty cases.

- The bill may increase the size of the state’s prison population. Any resulting increase in the Department of Rehabilitation and Correction’s GRF-funded incarceration expenditures is likely to be less than an estimated \$600,000 or more annually realized roughly 25 years after the enactment of the bill.

## Detailed Analysis

### Aggravated murder

The bill expands the offense of “aggravated murder” to include murders in which the victim was a family or household member of the offender and the offender has previously been convicted of domestic violence or an offense of violence against a family or household member and makes such an offender eligible to receive the death penalty. The bill also expands the list of aggravating circumstances that may result in imposition of the death penalty to include instances in which: (1) the victim of the offense was a family or household member of the offender, and (2) the offender had previously been convicted of domestic violence or an offense of violence against a family or household member.

### Trial

The county is responsible for trying and sentencing defendants in aggravated murder cases regardless of whether there is a death specification. This includes both the costs for the prosecution and defense counsel, as many defendants in murder cases are indigent. Any aggravated murder trial, regardless of the presence of a death specification, will likely incur costs for expert witness consultation and testimony, psychologists, and investigators. Those costs are not likely to differ significantly based solely on the presence or absence of a death specification, however, death penalty cases are bifurcated, meaning there are two phases: a guilt phase and a penalty phase. As such, many of the costs incurred in the guilt phase tend to be duplicated in the penalty phase, thereby significantly increasing the overall costs to try a death penalty case. Other costs, such as jury compensation, defense mitigation and prosecution experts, the number of defense attorneys required, and defense counsel compensation vary by case and by county.

A mix of quantitative and qualitative studies of other states have found that the cost of a case in which the death penalty has been sought and imposed is higher than a murder case in which life imprisonment has been imposed. These studies generally support the following conclusions:

- In some states, capital cases exceed the cost of life imprisonment cases in the range of up to between \$1 million and \$3 million per case.
- The total amount expended in a capital case is between two and a half and five times as much as a noncapital case.

These provisions likely mean an increase in workload on certain aggravated murder and death penalty eligible aggravated murder cases. Additional costs may be incurred by both the prosecution and defense, and for the Office of the State Public Defender to reimburse counties for all or a portion of their costs incurred in the provision of legal representation to indigent defendants in death penalty cases.

## **Department of Rehabilitation and Correction**

The average time served for an offender sentenced to prison for the offense of aggravated murder is 31.76 years, 7.3 years longer than an offender sentenced for murder, for which the average time served is 24.46 years.<sup>1</sup> The net impact of the provision on the Department of Rehabilitation and Correction is that some number of offenders currently committed to the Department for murder will instead be committed for aggravated murder and likely sentenced for a longer term. From 2014 to 2018, the average number of offenders committed to the Department for murder annually was 113 out of a total inmate population of around 49,000.

The marginal annual cost for a small number of additional bed years is about \$3,500 per bed. If 25 offenders under the terms of the bill were convicted of aggravated murder rather than murder, the maximum annual increase in cost to the Department would be around \$612,500 (25 offenders x 7 additional years x \$3,500). This increase would come after the time that would have been served for a murder charge under current law, or approximately at least 25 years after the enactment of the bill.

This cost increase will be offset somewhat by offenders being sentenced to death. The average stay on death row is just over 17 years, while the average length of stay for aggravated murder, as referenced above, is roughly 32 years.

## **Child endangering**

Under the bill, a person who commits domestic violence, in violation of existing law, in an occupied structure where one or more children under 18 years old are present, is also guilty of endangering children. A violation of endangering children under these circumstances is a first degree misdemeanor. Under continuing law, a first degree misdemeanor is punishable by no more than 180 days in jail, a fine of up to \$1,000, or both.

For 2017, the Ohio Attorney General's Office reported that over 37,000 domestic violence charges were filed statewide; the number of those that involved one or more children being present was not reported.

It appears that the likely effect of the bill's endangering children provision generally will not be to create new criminal cases, but to add to the number of charges for which an alleged domestic violence offender may be prosecuted, convicted, and sanctioned. This may increase to some degree the time and effort that county and municipal criminal justice systems currently expend to process certain domestic violence cases, but this in all likelihood can more or less be absorbed utilizing existing staff and available funding.

## **Domestic violence protection orders**

The bill expands the definition of "family or household member" to include a child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the respondent for the purpose of petitioning a court for a protection order and requires any court

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<sup>1</sup> Average Time Served Among Ohio Prison Releases, Calendar Year 2016, report by the Department of Rehabilitation and Correction.

that issues domestic violence protection orders to have a judge or magistrate available to accept a petition 24 hours a day, seven days a week.

The number of petitioners for civil protection orders is likely to increase to some degree as a result of the bill. This is because some individuals who are not eligible to petition for a domestic violence protection order under current law will meet the bill's requirements permitting them to do so. The number of additional new filings that may be created by the bill is unknown, but is not expected to create a substantial amount of work for the courts. To the degree that any costs can be quantified, they are likely to be minimal, mostly in terms of the additional time and effort that existing court personnel take to process filings and orders.

The greater potential expense to the courts is likely to result from the requirement for a judge or magistrate to be available to accept petitions at times that they are not required to be available under current law. Under current practice, a judicial official may be needed outside of normal business hours to issue a search warrant or an emergency order to remove a child from a home. Unlike a protection order, these examples are initiated by either a law enforcement or child services agency. In these examples, the process is often informal and varies from county to county. The manner in which a court of common pleas will comply is unclear, but could range from methods as described generally above to staffed office hours around the clock.

## **Domestic violence high risk teams**

The bill requires each agency, instrumentality, or political subdivision that is served by any peace officer who has arrest authority for violations of state or local law, create a domestic violence high risk team (DVHRT) for handling alleged incidents of domestic violence and alleged incidents of violating a protection order whose victims are determined to be high risk. Each DVHRT must include at least one peace officer, probation officer, or parole officer, at least one person who represents a community advocacy group, and any other person whom the chief law enforcement officer deems necessary.

The statewide costs of the task forces required by the bill are dependent upon the number of task forces created and the number of staff hours diverted from current duties to task force-related duties. For purposes of this analysis, neither the cost for the members representing community advocacy groups nor any additional members are included. There are 877 law enforcement agencies as defined by the bill which would be required to create a task force or to participate in a joint task force. If each agency assigned ten hours of officer time per month to a task force, the annual cost statewide would be \$3.0 million (120 hours x \$28.50 x 877). The cost of operating a DVHRT for law enforcement agencies decreases when joint task forces are formed. The magnitude of any decrease depends on the number of participating agencies and the number of staff assigned.

## **Law enforcement training**

The bill requires the Attorney General to adopt rules: (1) requiring every peace officer and trooper who handles complaints of domestic violence to complete annual professional training on intervention techniques in domestic violence cases, the use of a lethality assessment screening tool, and referral of high risk victims to a DVHRT, and (2) allowing the Ohio Peace Officer Training Commission to use federal funds to pay for this training.

The Ohio Peace Officer Training Academy's current course catalog includes various onsite trainings in the category of human relations. These trainings are typically either four or eight-hour courses, costing between \$50 and \$115 with an average hourly rate of \$14.

If ongoing lethality assessment training is included in an agency's current and continuing professional training requirements, there would be no additional cost for training. If the training is to be completed in addition to current practices, an estimated \$479,276 would be required statewide to provide one hour of training for each of the 34,234 peace officers in the state (34,234 x \$14) plus an additional \$975,669 in officer wages for that hour (Bureau of Labor Statistics 2017 average officer hourly wage of \$28.50 x 34,234).

## **No-drop policies**

The bill encourages prosecuting attorneys to employ no-drop policies in an effort to curb instances of domestic violence, but does not require the adoption of such policies. As such, this provision has no direct fiscal effect on the state and political subdivisions. No-drop policies rely on a presumption against seeking voluntary dismissal or a formal entry dropping charges in a case related to an incident of domestic violence.

## **Evidence in domestic violence actions**

The bill makes changes to procedures in criminal proceedings involving domestic violence and civil actions to recover damages based on an injury to person or property based on a criminal act of domestic violence.<sup>2</sup> According to the LSC bill analysis, to the extent that statutes in the bill conflict with Ohio's Rules of Evidence, they have no effect. If the provisions do have an effect on criminal and civil justice systems, the fiscal implications on investigation, prosecution, and sentencing are unknown.

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<sup>2</sup> For a thorough explanation of these changes, see LSC's bill analysis for H.B. 3.