

November 28, 2017

Re: Written Testimony in Support of S.B. No. 207

Good morning. My name is Carol Hamilton O'Brien and I am the Delaware County Prosecuting Attorney. I have been an attorney for over 30 years and I have been prosecuting criminal cases since 1990. I have prosecuted numerous cases of domestic violence which involve allegations of strangulation.

I am testifying today on behalf of S.B. No 207 because passage of this bill will enhance public safety and reduce the costs of prosecuting assault cases involving strangulation. In my experience, assaults involving strangulation most commonly occur during domestic violence incidents between intimate partners. Perhaps the most poignant example of this I have seen occurred in the State of Ohio v. Jason Dixon.

In that case, Dixon and his wife Jamie lived together in Delaware, Ohio. After returning from an afternoon of drinking at a local bar, Dixon continued drinking with several friends. After his friends departed, Dixon desired to engage in sexual intercourse with Jamie, his thirty-six-week-pregnant wife. When Jamie proved unwilling, he began to slap, punch, and kick her. This assault prompted her to call 911. Although Dixon knocked the phone from her hand, the phone line remained opened. What followed was a chilling recording of Dixon strangling Jamie unconscious.

The one hundred and twenty seconds that elapse after Jamie dropped the phone nearly resulted in her death. Initially, you can hear Jamie screaming and begging Dixon to stop his assault. Jamie's screams turn to mere whimpers as she tries to explain to Dixon that she cannot breathe. After a few more seconds, those whimpers are replaced with barely audible grunts, and then with silence. The silence was only broken by the periodic screams of their toddler who witnessed the events from his nearby pack-and-play. Fortunately, the assault ended a few moments later when Sgt. Mark Leatherman of the Delaware Police Department is heard beating on the apartment door.

When Sgt. Leatherman arrived, Jamie can be heard regaining consciousness. Dixon then orders her upstairs so he can deal with the police. Inside the apartment Sgt. Leatherman found the intoxicated Dixon with blood and bruising on his hands. Blood spatter was on the floor, the bed sheets, and the child's exersaucer that was next to their bed. The bed sheets were soaked with urine from when Jamie went unconscious and lost bladder control. Sgt. Leatherman found Jamie on the second floor terrified, but with few visible injuries. She insisted nothing had happened.

Because Jamie was thirty six weeks pregnant, she was transported to Grady Hospital for an examination. Fortunately, her baby was fine and she suffered only minimal visible injuries. She had minor cuts and bruising from Dixon's punches and kicks. However, the nurse also documented broken blood vessels in her neck from the strangulation. Similarly, photographs were taken of the ruptured blood vessels in her eyes that occurred as a result of the strangulation.

Under existing law, this type of assault would typically be charged as domestic violence. In the case of Mr. Dixon, it would have been punishable by no more than six months in the Delaware County jail. But for the timely arrival of Sgt. Leatherman, Jamie and her unborn child would likely have died that night. However, given other factors present in the Dixon case, a charge of attempted murder would have presented significant—if not insurmountable—obstacles at trial. The language added to the felonious assault statute by S.B. No. 207 would have been a welcome alternative in the Dixon case.

What happened in the Dixon case, and what happens each day across Ohio, is that prosecutors are forced to choose between charging assaults involving strangulation as misdemeanor domestic violence offenses or attempting to prove that strangulation constitutes felonious assault. A domestic violence charge carries a possible jail term of six months; felonious assault carries a potential prison term

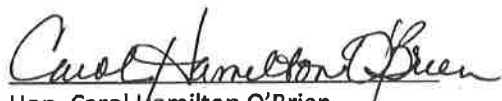
of up to eight years. While felonious assault is often the desired charge, the existing definition of "serious physical harm," which the State is required to prove in a felonious assault case, requires the State retain an expert witness to prove "serious physical harm" occurred.

Under Ohio law, expert testimony is required in criminal cases to prove facts when they are beyond the common knowledge of the typical juror. Despite the overwhelming medical evidence regarding the dangers of strangulation, the true danger of strangulation is not commonly known by jurors. Accordingly, if the State is to prove strangulation carries a "substantial risk of death" or of such gravity "as would normally require hospitalization", either of which could support a charge of felonious assault, the testimony from a medical expert is required.

While there are numerous experts throughout Ohio who can testify regarding the dangers of strangulation, those experts rarely work for free. In a relatively straightforward assault case involving strangulation, a medical expert will likely spend more than a dozen hours reviewing records and drafting the report they are required to produce prior to trial under Ohio's criminal rules. Additional time is then required for trial preparation and courtroom testimony. With most expert witnesses charging between \$150 and \$250 per hour, the cost of prosecuting these cases as felonious assaults, rather than under the misdemeanor domestic violence statute increases dramatically. In cases where an indigent defendant is entitled to a competing expert at public expense, the cost is described above is doubled.

While our office has retained expert witnesses in numerous assault cases involving strangulation, the cost to the taxpayer can be high. Under existing law, the State is required to spend thousands of dollars in each case to educate the jury regarding the dangers of strangulation. S.B. No 207 would eliminate that requirement. By creating a new section of felonious assault, specifically addressing strangulation, the State is relieved of the burden of presenting expert testimony that strangulation can constitute serious physical harm under Ohio law. Given that there is no genuine dispute as to the dangers of strangulation, the proposed legislation would be a welcome boon to prosecutors across the State.

Because the proposed legislation would both increase public safety and decrease the financial burden in prosecuting assault cases involving strangulation, I respectfully urge the General Assembly to approve it as introduced.



Hon. Carol Hamilton O'Brien  
Delaware County Prosecutor