



October 21, 2021

OPPONENT TESTIMONY RE: HB 3

Chairman LaRe, Vice Chair Swearingen, and Ranking Member Leland:

Thank you for the opportunity to testify on HB3 as you consider improving this bill and taking into account the concerns of the defense bar throughout Ohio.

This bill has been vastly improved since it was first introduced, and I want to commend this Committee for the hard work it has done in considering this bill and its laudable goal to help protect domestic violence victims. However, despite its commendable intent, the OACDL still has serious concerns about two provisions in the bill – the provision to expand aggravated murder, and the provisions which expand the criminal domestic violence definition of strangulation outside the realm of physical harm.

Aggravated Murder

The OACDL strongly opposes the expansion of aggravated murder currently contained in the bill as it would both diminish the distinction between murder and aggravated murder and would also deeply prejudice the defendant at trial. First, the distinction between murder and aggravated murder is as old as the common law – it has long been understood that the worst form of murder is premeditated murder or, in Ohio, murdering someone having had prior calculation and design to do so. That distinction is critical as the most heinous form of murder is the cold, calculated, preplanned murder. On the other hand, the law has always recognized that killings which happen during the heat of passion, while abhorrent, do not rise to the level of cold-blooded, premeditated murder, and therefore should be punished accordingly. Remember, in Ohio both murders and aggravated murders are life sentences, and the parole board can and will consider the circumstances surrounding the murder when deciding the appropriate release point. This provision is unnecessary and unacceptably blurs the line between premeditated murder and murder under other circumstances.

In addition, and even more concerning, is that the provision as written, would severely prejudice the defendant at trial. In order to prove the aggravated murder, the State would have to prove that the defendant was previously convicted of a felony domestic violence which resulted in severe physical harm. Therefore, the jury would hear the details of the previous crime, causing unavoidable prejudice. A bedrock principle of American law is that the Defendant should stand trial solely on the charges he is facing and not his other, prior bad acts. This is why the Rules of



Evidence are so careful to allow evidence of prior bad acts only in very limited circumstances and for very limited reasons, typically with a limiting instruction. However, in this circumstance, a person standing trial for murder would be confronted with extremely prejudicial evidence about prior bad acts that would unacceptably taint the jury. Therefore, at a minimum, the prior act evidence should be eliminated as an element of the offense and only be used as a sentencing enhancement.

Strangulation

Finally, the OACDL has serious concerns about the breadth of the strangulation language currently in the bill. Our concern is twofold – one, the definition of strangulation, with only a reckless mens rea and no requirement that harm was intended or caused, is significantly overbroad and departs from the fundamental principle of assault, which is intent to commit harm, or harm resulting from the act. Secondly, the high degree of felony in this case subjects the person to a significant prison sentence, on par with recklessly killing a person. This is not proportional to the harm (or lack thereof) caused. This bill treats recklessly, temporarily, restricting breathing with no requirement that harm was caused as the **same level of felony as recklessly killing a person**. [See RC 2903.041; RC 2903.06(A)(2)].

The OACDL strongly recommends that, at a minimum, an intent to harm provision be added, and that the degree of offense be reduced to a misdemeanor unless physical harm or serious physical harm occurred.

Respectfully Submitted,

A handwritten signature in blue ink that reads 'Blaise Katter'.

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Public Policy Chair
OACDL