STATEMENT OF CULLEN SWEENEY
CHIEF PUBLIC DEFENDER
CUYAHOGA COUNTY, OHIO

TO THE CRIMINAL JUSTICE COMMITTEE
OHIO HOUSE OF REPRESENTATIVES

In Opposition to H.B. 3

May 20, 2021

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Chairman LaRe
Vice-Chair Swearingen
Ranking Member Leland
Members of the Committee:

Thank you for the opportunity to address serious problems with H.B. 3.

My comments today, made on behalf of the Cuyahoga County Public Defender's Office, address several substantive criminal law issues related to the bill:

- We are opposed to expanding the definition of aggravated murder to include murder of a family member when the defendant has a prior offense for domestic violence.

- We are opposed to the proposed changes to the domestic violence law, as currently drafted. **In this regard, we are asking the Committee to consider amending the bill to recognize circumstances where restricting circulation or obstructing the air passage would be a sentence-enhancer as opposed to an element of a new offense. We have provided suggested language.**

- We are opposed to mandating consideration of a domestic violence screening tool when a court considers release on bail and/or sentencing.

Each of our concerns is addressed below. The Committee's attention is particularly drawn to Item 2, below, which addresses the domestic violence aspect of the bill.

1. Expanding aggravated murder, R.C. 2903.01 (lines 195ff. of H.B. 3)

Murder under R.C. 2903.02(A) is defined as the purposeful killing of another. Under the bill, a person who commits a purposeful killing of a family member and who also has a prior domestic violence offense commits aggravated murder under R.C. 2903.01 – not murder. As a result, the possible punishment increases from 15 years to life, for murder, to a life term for aggravated murder which, within the discretion of the sentencing judge, can include life without parole and will never allow for parole before 20 years.

While any purposeful killing is serious and should be punished appropriately, carving out a special provision in the domestic violence context is not consistent with the remainder of the

aggravated murder provision of the Revised Code. Nowhere else in R.C. 2903.01 is a purposeful killing of another raised to aggravated murder on the basis of a prior conviction. Thus, a person who has a prior murder conviction and murders again will still be guilty of murder. Yet under this bill, a person who purposely kills a family member and who has a prior misdemeanor domestic violence conviction commits aggravated murder.

Similarly, carving out family members as a specially protected class of victims whose purposeful killing raises what would otherwise be murder to the offense of aggravated murder is out of context. The only specially recognized victims whose purposeful killing becomes aggravated murder by virtue of their identity are:

- Children under 13,
- Law enforcement officers in the performance of duty, and
- First responders when the intention was to kill a first responder.

These specially protected classes are unique. Society has a *parens patriae* role with respect to children, and a special duty to protect those who serve as peace officers or first responders.

But domestic murders, as serious as they are, are not necessarily committed by persons for whom it is appropriate to throw away the prison key. Domestic homicides are frequently the result of arguments that have escalated out of control. For this reason, some of these cases end with a voluntary manslaughter disposition. Murder, with a 15 year parole eligibility, represents a sentence that is both severe and still allows the Parole Board to make a meaningful determination about rehabilitation and the likelihood of recidivism. Aggravated murder unnecessarily extends the period before which parole can be considered (not necessarily granted). And, if a judge imposes a sentence of life without parole, the prison door is locked shut.

Ironically, this increase in punishment could be particularly onerous on battered spouses, some of whom have committed a prior domestic violence offense even though, for the most part, they, themselves, have been the victims of abusive spouses. In our experience, because of the turbulence in which they have found themselves, battered spouses will sometimes call the police when attacked, and sometimes fight back when attacked. Yet, oftentimes, particularly during their first time as a criminal defendant facing a misdemeanor domestic violence charge for fighting back, the spouse will plead guilty in hopes that a quick resolution of the case will enhance familial reconciliation. When, at a later time, the battered spouse finally has had it and, regrettably, kills their abuser, they are convicted of murder but, after fifteen years (if not before) have learned from the experience and are excellent parole candidates. Under this bill, that same battered spouse faces aggravated murder and the Parole Board is powerless to take this special circumstance into account for at least an additional five years, if ever.

Moreover, the difference between aggravated murder without a death specification and aggravated murder with a death specification is a fine line. The bill does not make this new form of aggravated murder death eligible, *per se*. However, if the death occurred attendant to a kidnapping (which in Ohio does not have to be anything beyond restraining the victim during the attack, itself), then aggravated murder can be indicted as a capital offense. Similarly, if the offender were a guest at the victim's house when an argument erupted that led to the victim being killed, the offender would have committed a burglary by virtue of the assaultive conduct and would once again be death-eligible. See, *State v. Steffen,* 31 Ohio St.3d 111, 509 N.E.2d 383 (1987) (privilege to remain in home revoked when guest assaults occupant, sustaining conviction for burglary).

Respectfully, this is too much.

2. Choking/smothering as a form of domestic violence (ll. 256ff.)

A person who neither causes serious physical harm nor acts knowingly to cause physical harm should not be committing felony domestic violence under the laws of the State of Ohio. As drafted, H.B. 3's choking/smothering provision goes far beyond malicious choking or smothering. A teenager trying to imitate the MMA while wrestling his brother could technically violate the proposed new form of domestic violence. For that matter, so could a parent who places a hand over the face of a crying baby while trying to get the child out of a public meeting or church service. Taken to its logical conclusion, H.B. 3 outlaws pillow fights that get out of hand. While, hopefully, no prosecutor would be this draconian in the exercise of discretion, laws should not be written in such a way that prosecutorial discretion is the only barrier between innocent activity and a felony conviction. Under such circumstances, the lack of guidance provided to prosecutors invites inconsistent enforcement of the law -- the same conduct could be considered horseplay in one jurisdiction or when committed by one defendant, and a felony domestic violence in another jurisdiction or when committed by a different defendant. Moreover, in that child custody battles can become nasty, it would be very possible for an estranged spouse to use the expanded definition of domestic violence to his or her advantage in a custody case.

And for what reason? If, in fact, serious physical harm was caused, the conduct already constitutes a second-degree felony for felonious assault under R.C. 2903.11. If serious physical harm is attempted, then attempted felonious assault is already available as a third-degree felony – which is the same offense severity that H.B. 3 would ascribe to such conduct. *See,* R.C. 2903.11 and R.C. 2923.02. And felonious assault against a family member has the same ability to

enhance a future domestic violence case as would the H.B. 3's new addition to the domestic violence statute.

a. Penalty enhancement for choking/obstructing the airway

At the same time, we recognize that choking and other forms of airway obstruction present a unique and enhanced danger. To that end, rather than define a new type of domestic violence, **we suggest a penalty enhancement when the offense of domestic violence, as currently constituted, is committed by choking/airway obstruction.**

The advantage of this penalty enhancement approach is severalfold:

- The current case law on mens rea, parental discipline, medical necessity, *etc.* still applies. Thus, the bill's proposed new subsections (D), (G) and (H) become unnecessary.
- It is easier, and is consistent with what is the real goal of this legislation. Enhancing the penalty for domestic violence committed by choking/smothering is one thing, but criminalizing horseplay is entirely another. In this regard, the Committee's attention is drawn to S.B. 90, the Senate version of a domestic violence choking/smothering amendment to R.C. 2919.25 that is currently being considered in the Senate Judiciary Committee. S.B. 90 keeps the mens rea of "knowingly." The Senate sponsors' testimony is clear: "Our main goal is very straightforward--to classify strangulation from a misdemeanor to a felony. " Statement of Sens. Kunze and Antonio, March 31. 2021.
- **It is consistent with the December, 2, 2020, proponent testimony of Det. Sgt. Todd Curtis of the Perrysburg Township Police Department in the Senate Judiciary Committee, at the 53 minute mark of the Committee hearing. Sgt. Curtis said the violation should be "knowing." As currently drafted, HB 3 contains less than a knowingly mens rea.**

We also recommend reducing the penalties slightly -- the starting point for a domestic violence offense involving choking/smothering should be a fifth -degree felony when choking/smothering is attempted but there is no physical harm whatsoever (*e.g*. the victim avoided the grasp of the offender) as opposed to a third-degree felony. The offense severity would increase to a fourth-degree felony if physical harm (already defined by R.C. 2901.01(A)(3)) as "any injury, illness, or other physiological impairment, regardless of its

gravity or duration") results or if serious physical harm is recklessly inflicted. This would allow for eighteen months of imprisonment for a first offender who causes any quantum of physical harm. As with the current domestic violence provision, our suggestions for these newly-enacted DV penalties are still complemented under current law by an F-3 offense for attempted felonious assault and an F-2 offense for felonious assault. This creates a continuum of punishment that can be employed to protect household members from violence: For first offenders, non-choking DV remains an M-1; the new choking/smothering DV would be an F-5 for attempts and an F-4 where knowingly-imposed physical harm or recklessly-imposed serious physical harm results; knowingly attempting serious physical harm is an F-3 attempted felonious assault under R.C. 2903.11 and R.C. 2923.02; knowingly causing serious physical harm is an F-2 felonious assault under R.C. 2903.11.

Consistent with the current DV penalties, our proposal regarding the punishment for choking/smothering also contains enhanced penalties for repeat offenders and provides for mandatory imprisonment where the offender is either a multiple repeat offender or the offender is aware that the victim is pregnant.

b. Requiring more than the victim's testimony to establish enhanced penalty

In addition, we recommend that HB 3 be amended to provide that the enhanced penalties for choking/smothering not be triggered unless there is evidence other than the victim's own testimony. For example, evidence of physical harm to the neck area would suffice, as would the testimony of another witness.

Our rationale for requiring evidence other than the victim's testimony is to ensure that the choking/smothering enhancement not be used as a tool by vindictive family members. It is too easy for a family member to raise the punishment ante by claiming that domestic violence was

perpetrated by choking in order to secure felony penalties (and increase the likelihood of the defendant pleading guilty to a misdemeanor DV to avoid a felony conviction). Similarly, it is too easy for the true perpetrator to claim that the victim was the first aggressor and did so by choking/suffocating but left no marks. As noted above, our experience tells us that domestic violence allegations can be used as tools in divorce and child custody proceedings. With increased penalties for choking/smothering comes a concomitant need to ensure that those penalties are not misapplied.

Requiring evidence other than the victim's testimony is not unprecedented. Our suggestion in this regard is taken from a similar provision in R.C. 2907.06(B), the sexual imposition statute, which provides that: "No person shall be convicted . . . solely upon the victim's testimony unsupported by other evidence."

c. The allied offense provision should be kept

We support the bill's inclusion of a provision that recognizes the allied nature domestic violence with R.C. 2903's various assault statutes. This is consistent with the continuum of punishment outlined above.

d. A proposed markup is included.

Appendix A of this Statement sets forth our suggested amendment to the Bill's domestic violence section. It also includes a markup of the affected sentencing provisions.

3. Mandatory consideration of domestic violence screening results, R.C. 2935.033, at sentencing, R.C. 2929.12 and 2929.22; and at bail hearings, R.C. 2937.23 (ll. 715-718, 2256-58, 3144-47).

Mandating that the results of a domestic violence lethality assessment screening tool be considered at every sentencing and every bail hearing is not going to enhance the quality of

either sentencing or bail determinations. These assessment tools, employed by police responding to an alleged incident of domestic violence, utilize information given in an emotionally charged context by alleged victims at a time when those victims are often upset. At times, the alleged victims, because they realize a family member is being arrested, will understate concerns for their safety. At other times, the alleged victim will overstate those same concerns.

Rather than mandate the consideration of these tools at the sensitive stages of bail and sentencing, the Revised Code and Rules of Criminal Procedure currently allow judges to consider any relevant information provided by the prosecutor and, particularly since the passage of Marsy's Law, by the alleged victim. Prosecutors and victims are in the best position to know and present the truth to the court directly – without the filter of an assessment tool that was facilitated by law enforcement, which, understandably, is "engaged in the often competitive enterprise of ferreting out crime." *United States v. Johnson*, 333 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948).

This is not to say that assessment tool results should never see the courtroom. But the Revised Code already allows for the consideration of such evidence as part of the judge's plenary authority to consider all relevant evidence. Giving these assessment tools special recognition in the bail context places them ahead of specially designed bail risk assessment tools, which are not recognized as having to be considered under Crim. R. 46. We would also note that adding a mandatory consideration of the assessment tool in considering bail raises a serious question of constitutionality in that Crim. R. 46 does not include such a provision and controls the procedures to be followed at bail hearings. See Ohio Const. Art. IV, Sec. 5 (Modern Courts Amendment).

Similarly, the sentencing statutes currently speak of factors to be considered. *See,* R.C. 2929.12. H.B. 3 would include lethality assessment results as the only evidence specifically mandated to be considered at sentencing. Respectfully, this places the assessment tool out of context vis-à-vis other aspects of a law enforcement investigation and prosecutorial discretion.

Conclusion

Thank you again for the opportunity to address the Committee.

APPENDIX A

Cuyahoga County Public Defender's Suggested Change to R.C. 2919.25 and to R.C. 2912.13 to Address Choking/Smothering:

Current statutory language is not highlighted; additions made by Public Defender are underlined; omissions by Public Defender are ~~stricken.~~

HB 3 language that is being removed by Public Defender is stricken and highlighted in ~~yellow~~

HB 3 language that is being kept by Public Defender is underlined and highlighted in yellow.

R.C. 2919.25 [HB 3 at lines 249 ff]

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D)

~~No person shall recklesly impede the normal breathing or circulation of the blood of a family or household member by applyig pressure to the throat or neck, or by covering the nose and mouth, of the family or household member.~~

(1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D) ~~(E)~~ (2) to ~~(6)~~ (9) ~~(8)~~ of this section.

(2) Except as otherwise provided in divisions (D) ~~(E)~~ (3) to (5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (D) ~~(E)~~ (4), (6), (7) or (8) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911.12, 2911.211, or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and, if

the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(~~6~~) (9) ~~(E)(8)~~ of this section, and a violation of division (C) of this section is a misdemeanor of the second degree.

(4) Except as otherwise provided in division (D) ~~(E)~~ (6),(7) or (8) of this section If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D) ~~(E)~~ (3) of this section involving a person who was a family or household member at the time of the violations or offenses, a violation of division (A) or (B) of this section is a felony of the third degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D) ~~(6)~~ (9) ~~(E)~~ ~~(8)~~ of this section, and a violation of division (C) of this section is a misdemeanor of the first degree.

(5) Except as otherwise provided in division (D) ~~(E)~~ (3), ~~or~~ (4), (6), (7) or 8 of this section, if the offender knew that the victim of the violation was pregnant at the time of the violation, a violation of division (A) or (B) of this section is a felony of the fifth degree, and the court shall impose a mandatory prison term on the offender pursuant to division (D)(~~6~~) (9) ~~(E) (8)~~ of this section, and a violation of division (C) of this section is a misdemeanor of the third degree.

(6) ~~Except as otherwise provided in division (E)(7) of this section, a violation of division (D) of this section is a felony of the third degree.~~

~~(7) If the offender previously has pleaded guilty to or been convicted of a violation of this section, or if the offender previously has pleaded guilty to or been convicted of two or more offenses of violence, a violation of division (D) of this section is a felony of the second degree. (8) If division (D)(E)(3), (4), or (5) of this section requires the court that sentences an offender for a violation of division (A) or (B) of this section to impose a mandatory prison term on the offender pursuant to this division, the court shall impose the mandatory prison term as follows: (a) If the violation of division (A) or (B) of this section is a felony of the fourth or fifth degree, except as otherwise provided in division (D)(6)(E)(8)(b) or (c) of this section, the court shall impose a mandatory prison term on the offender of at least six months. (b) If the violation of division (A) or (B) of this section is a felony of the fifth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of twelve months. (c) If the violation of division (A) or (B) of this section is a felony of the fourth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of at least twelve months. (d) If the violation of division (A) or (B) of this section is a felony of the third degree, except as otherwise provided in division (D)(6)(E)(8)(c) of this section and notwithstanding the range of definite prison terms prescribed in division (A)(3) of section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of six months or one of the prison terms prescribed in division (A)(3) (b) of section 2929.14 of the Revised Code for felonies of the third degree. (e) If the~~

~~violation of division (A) or (B) of this section is a felony of the third degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, notwithstanding the range of definite prison terms prescribed in division (A)(3) of section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of one year or one of the prison terms prescribed in division (A)(3)(b) of section 2929.14 of the Revised Code for felonies of the third degree.~~

If a violation of division (A) is perpetrated by conduct that attempts to impede the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth, then a violation of divsion (A) is a fifth degree felony unless the offender previously has pleaded guilty to or been convicted of an offense of domestic violence or a violation or offense of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violation or offense in which case the offense is a fouth degree felony. If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, the court shall impose a mandatory prison term on the offender pursuant to division (D)(9) of this section. If the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(9) of this section. A finding that the offender attempted the offense by conduct that impedes the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth cannot be based solely upon the victim's testimony unsupported by other evidence.

(7) If a violation of division (A) is perpetrated by conduct that causes physical harm and impedes the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth, then a violation of divsion (A) is a fourth degree felony unless the offender previously has pleaded guilty to or been convicted of an offense of domestic violence or a violation or offense of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violation or offense in which case the offense is a third degree felony. If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, the court hall impose a mandatory prison term on the offender pursuant to division (D)(9) of this section. If the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(9) of this section. A finding that the offender attempted the offense by conduct that impedes the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth cannot be based solely upon the victim's testimony unsupported by other evidence.

(8) If a violation of division (B) is perpetrated by conduct that impedes the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth, then a violation of divsion (B) is a fourth degree felony unless the offender previously has pleaded guilty to or been convicted of an offense of domestic violence or a violation or offense of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violation or offense in which case the offense is a third degree felony. If the offender previously has pleaded guilty to or been convicted of two or more offenses of domestic violence or two or more violations or offenses of the type described in division (D)(3) of this section involving a person who was a family or household member at the time of the violations or offenses, the court hall impose a mandatory prison term on the offender pursuant to division (D)(9) of this section. If the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(9) of this section. A finding that the offender attempted the offense by conduct that impedes the normal breathing or circulation of the blood of a family or household member by applying pressure to the throat or neck, or by covering the nose and mouth cannot be based solely upon the victim's testimony unsupported by other evidence.

(~~8~~) (9) If division (D) ~~(E)~~ (3), (4), ~~or~~ (5), (6), (7) or (8) of this section requires the court that sentences an offender for a violation of division (A) or (B) of this section to impose a mandatory prison term on the offender pursuant to this division, the court shall impose the mandatory prison term as follows:

(a) If the violation of division (A) or (B) of this section is a felony of the fourth or fifth degree, except as otherwise provided in division (D) (9) ~~(E)(8)~~ (b) or (c) of this section, the court shall impose a mandatory prison term on the offender of at least six months.

(b) If the violation of division (A) or (B) of this section is a felony of the fifth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of twelve months.

(c) If the violation of division (A) or (B) of this section is a felony of the fourth degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, the court shall impose a mandatory prison term on the offender of at least twelve months.

(d) If the violation of division (A) or (B) of this section is a felony of the third degree, except as otherwise provided in division (D)(9) ~~(E)(8)~~ (e) of this section and notwithstanding the range of definite prison terms prescribed in division (A)(3) of section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of six months or one of the prison terms prescribed in division (A)(3) (b) of section 2929.14 of the Revised Code for felonies of the third degree.

(e) If the violation of division (A) or (B) of this section is a felony of the third degree and the offender, in committing the violation, caused serious physical harm to the pregnant woman's unborn or caused the termination of the pregnant woman's pregnancy, notwithstanding the range of definite prison terms prescribed in division (A)(3) of section 2929.14 of the Revised Code for a felony of the third degree, the court shall impose a mandatory prison term on the offender of either a definite term of one year or one of the prison terms prescribed in division (A)(3)(b) of section 2929.14 of the Revised Code for felonies of the third degree.

(E) ~~(F)~~ Notwithstanding any provision of law to the contrary, no court or unit of state or local government shall charge any fee, cost, deposit, or money in connection with the filing of charges against a person alleging that the person violated this section or a municipal ordinance substantially similar to this section or in connection with the prosecution of any charges so filed.

(F) ~~(G) It is not required in a prosecution under division (D) of this section to allege or prove that the family or household member who is the victim suffered physical harm or serious physical harm or visible injury or that there was an intent to kill or protractedly injure the family or household member.~~

~~(H) It is an affirmative defense to a charge under division (D) of this section that the act was done to the family or household member as part of a medical or other procedure undertaken to aid or benefit the victim.~~

~~(I)~~ A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.

~~(J)~~ As used in this section and sections 2919.25 [statutory language unchanged hereafter]

Accompanying changes to sentencing laws:

R.C. 2929.13 (H.B.3 at lines 1047-1050)

(17) A felony violation of division (A) or (B) of section 2919.25 of the Revised Code if division (D)(3) ~~(E)(3)~~, (4), ~~or~~ (5), (6), (7) or (8) of that section, and division (D)(~~6~~) (9) ~~(E)(8)~~ of that section, require the imposition of a prison term; [Continue with statutory text]

R.C. 2929.14 (H.B. 3 at lines 1235 ff.)

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (B)(9), (B)(10), (B)(11), (E), (G), (H), (J), or (K) of this section or in division (D)(~~6~~) (9) ~~(E)(8)~~ of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a prison term that shall be one of the following: [Continue with statutory text]