



Sub. H.B. 29

126th General Assembly
(As Passed by the General Assembly)

- Reps.** Raussen, D. Evans, Distel, Aslanides, Allen, Raga, Driehaus, Trakas, Barrett, Daniels, Carano, McGregor, Reidelbach, Willamowski, Hartnett, Martin, Brinkman, Kearns, C. Evans, Blessing, Schaffer, Harwood, Miller, Beatty, Blasdel, Boccieri, Brown, Bubb, Buehrer, Calvert, Carmichael, Cassell, Chandler, Coley, Collier, DeBose, DeWine, Domenick, Faber, Fende, Fessler, Flowers, Garrison, Gibbs, Gilb, Hagan, Healy, Hoops, Hughes, Key, Kilbane, Latta, Law, Mason, Mitchell, Oelslager, Otterman, S. Patton, T. Patton, Perry, Redfern, Sayre, Schlichter, Schneider, Seaver, Seitz, Setzer, G. Smith, D. Stewart, J. Stewart, Sykes, Taylor, Uecker, Wagoner, Walcher, Webster, White, Widowfield, Wolpert, Woodard, Yates, Yuko
- Sens.** Jordan, Grendell, Schuring, Dann, Mallory, Zurz, Cates, Austria, Carey, Coughlin, Fedor, Fingerhut, Gardner, Goodman, Harris, Hottinger, Mumper, Niehaus, Armbruster, Clancy, Jacobson, Amstutz, Brady, Miller, Padgett, Prentiss, Roberts, Schuler, Spada, Wachtmann

Effective date: August 26, 2005

ACT SUMMARY

- Requires that a person charged with committing an offense of violence against a family or household member appear before the court for the setting of bail if: (1) the court is required under existing law to consider specified factors in setting bail for the person, or (2) the arresting officer indicates in a document accompanying the complaint one of several specified circumstances.
- Requires that a court consider certain enumerated factors in setting bail for a person who is charged with committing an offense of violence against a family or household member and who is required under the act to appear before the court for the setting of bail.
- Authorizes the court to permit a person who is charged with committing an offense of violence against a family or household member and who is

required under the act to appear before the court for the setting of bail to appear by video conferencing equipment.

- Authorizes the court to waive the appearance, otherwise required under the act, for the setting of bail of a person who is charged with committing a misdemeanor offense of violence against a family or household member and to set bail in accordance with specified criteria.
- Urges the Supreme Court to amend the existing Rules of Civil and Criminal Procedure, or to adopt new rules, to acknowledge the exigency of, give priority to, and otherwise encourage the speedy resolution of cases involving domestic violence.

CONTENT AND OPERATION

Prior law

Factors to be considered in the setting of bail--duty to consider

Under prior R.C. 2919.251(A), a court had to consider a list of specific factors, in addition to any other circumstances that it might take into account and notwithstanding the provisions of the Criminal Rules that pertain to the setting of bail, before setting bail for a person who was charged with the commission of any "offense of violence" if the alleged victim was a "family or household member" at the time of the offense and either of the following applied:

(1) The person charged, at the time of the alleged offense, was subject to the terms of a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or 3113.31.

(2) The person previously was convicted of or pleaded guilty to any of the following:

(a) A violation of R.C. 2919.25 (domestic violence) or a violation of R.C. 2919.27 (violation of a protection order) involving a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or R.C. 3113.31;

(b) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that was substantially similar to either R.C. 2919.25 or 2919.27;

(c) A violation of R.C. 2909.06 (criminal damaging or endangering), 2909.07 (criminal mischief), 2911.12 (burglary), or 2911.211 (aggravated

trespass) if the victim of the violation was a family or household member at the time of the violation;

(d) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that was substantially similar to R.C. 2909.06, 2909.07, 2911.12, or 2911.211 if the victim of the violation was a family or household member at the time of the commission of the violation;

(e) Any offense of violence if the victim of the offense was a family or household member at the time of the offense.

Factors to be considered

The factors that the court had to consider in setting bail in the circumstances described above were (R.C. 2919.251(A)):

(1) Whether the person had a history of domestic violence or a history of other violent acts;

(2) The mental health of the person;

(3) Whether the person had a history of violating the orders of any court or governmental entity;

(4) Whether the person was potentially a threat to any other person;

(5) Whether setting bail at a high level would have interfered with any treatment or counseling that the person or the family of the person was undergoing.

Setting of bail schedule

Prior law authorized any court with jurisdiction over charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense to set a schedule for bail to be used in cases involving those offenses. A schedule so set had to require that a judge consider all of the factors listed above under "**Factors to be considered**" and could require judges to set bail at a certain level if the history of the alleged offender or the circumstances of the alleged offense met certain criteria in the schedule. (R.C. 2919.251(C).)

Operation of the act

Required appearance for the setting of bail

The act generally requires that a person charged with committing any "offense of violence" against a "family or household member" appear before the court for the setting of bail if any of the following applies (R.C. 2919.251(A)):

(1) Any circumstance specified in (1) or (2)(a) to (e) of "**Factors to be considered in the setting of bail--duty to consider**," under "**Prior law**," above, applies;

(2) The arresting officer indicates in a police report or other document accompanying the complaint any of the following: (a) that the arresting officer observed on the alleged victim objective manifestations of "physical harm" that the arresting officer reasonably believes are a result of the alleged offense, (b) that the arresting officer reasonably believes that the person had on the person's person at the time of the alleged offense a deadly weapon or dangerous ordnance, or (c) that the arresting officer reasonably believes that the person presents a credible threat of "serious physical harm" to the alleged victim or to any other person if released on bail before trial.

The act allows the court, on its own motion or on the motion of a party, to permit a person required under the provision described above to appear before the court for the setting of bail to appear by video conferencing equipment on whatever terms the court may direct (R.C. 2919.251(D)(1)).

Under the act, if the court believes that the appearance in person or by video conferencing equipment of a person who is required under the provision described above to appear before the court for the setting of bail is impracticable, and if the offense charged is a misdemeanor, the court may waive the appearance and release the person on bail. If the court waives the appearance, it must release the person on bail set in accordance with its schedule for bail established under existing law (see above), or, if the court has not established such a bail schedule, it must release the person on one or both of the following types of bail in an amount set by the court: (1) a bail bond secured by a cash deposit of 10% of the amount of the bond or (2) a surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the accused. (R.C. 2919.251(D)(2).)

Factors to be considered in setting bail

The act expands the circumstances in which the existing bail factor consideration provision applies and revises and expands the factors that must be

considered. Under the act, a court must consider, to the extent that information about any of the factors is available to the court, 11 factors, in addition to any other circumstances considered by the court and notwithstanding the provisions of the Criminal Rules that pertain to the setting of bail, when setting bail for a person who is charged with committing an offense of violence against a family or household member and who appears before the court under the act's provisions (see "**Required appearance for the setting of bail**," above) for the setting of bail. These factors are (R.C. 2919.251(B) and (E)):

(1) Whether the person has a history of domestic violence or a history of other violent acts (continuing law);

(2) The mental health of the person (continuing law);

(3) Whether the person has a history of violating the orders of any court or governmental entity (continuing law);

(4) Whether the person is potentially a threat to any other person (continuing law);

(5) Whether the person has access to "deadly weapons" or a history of using "deadly weapons" (replacement for prior "interference with treatment or counseling" factor);

(6) Whether the person has a history of abusing alcohol or any controlled substance, as defined in the existing Controlled Substance Law--not in the act (new);

(7) The severity of the alleged violence that is the basis of the offense, including but not limited to, the duration of the alleged violent incident, and whether the alleged violent incident involved serious physical injury, sexual assault, strangulation, abuse during the alleged victim's pregnancy, abuse of pets, or forcible entry to gain access to the alleged victim (new);

(8) Whether a separation of the person from the alleged victim or a termination of the relationship between the person and the alleged victim has recently occurred or is pending (new);

(9) Whether the person has exhibited obsessive or controlling behaviors toward the alleged victim, including but not limited to, stalking, surveillance, or isolation of the alleged victim (new);

(10) Whether the person has expressed suicidal or homicidal ideations (new);

(11) Any information contained in the complaint and any police reports, affidavits, or other documents accompanying the complaint (new).

Under the provision authorizing a court to set a bail schedule for charges alleging the commission of an offense of violence in circumstances in which the alleged victim of the offense was a family or household member at the time of the offense, if a court sets a schedule, the schedule must require that a judge consider all of the factors in the act's modified and expanded list of factors (R.C. 2919.251(C)).

Miscellaneous

The act states that the requirement it enacts that certain persons appear before the court for the setting of bail neither creates a right in a person to appear before the court for the setting of bail nor prohibits a court from requiring any other person charged with an offense of violence who is not required by the act to appear in court to appear before the court for the setting of bail (R.C. 2919.251(D)(3)).

The act states that the General Assembly urges the Supreme Court to amend the existing Rules of Civil and Criminal Procedure, or to adopt new rules, to acknowledge the exigency of, give priority to, and otherwise encourage the speedy resolution of cases involving domestic violence (Section 3).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-01-05	p. 179
Reported, H. Judiciary	04-21-05	p. 698
Passed House (98-0)	04-27-05	pp. 722-723
Reported, S. Judiciary on Criminal Justice	05-04-05	p. 477
Passed Senate (30-0)	05-04-05	pp. 480-481
House concurred in Senate amendments (95-1)	05-10-05	pp. 768-769

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