



**Sub. H.B. 29**

126th General Assembly  
(As Reported by H. Judiciary)

**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**

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**BILL 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 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 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 to appear before the court for the setting of bail to appear by video conferencing equipment.
- Authorizes the court to waive the appearance 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.

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## CONTENT AND OPERATION

### **Required appearance for the setting of bail**

The bill 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 the arresting officer indicates in a police report or other document accompanying the complaint any of the following (R.C. 2919.251(A)):

(1) 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;

(2) 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;

(3) 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 bill allows the court, on its own motion or on the motion of a party, to permit a person required by the bill 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 bill, if the court believes that the appearance in person or by video conferencing equipment of a person who is required by the bill to appear for the setting of bail would be 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, or, if the court has not established 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 the setting of bail**

#### **Existing law**

Under existing R.C. 2919.251, a court must consider a list of specific factors, in addition to any other circumstances that it may take into account, before

setting bail for a person who is charged with the commission of any offense of violence if (1) the alleged victim was a family or household member at the time of the offense and (2) 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 or previously was convicted of or pleaded guilty to any of the following (see **COMMENT** 1, 2, and 3):

(1) 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 or consent agreement approved pursuant to R.C. 2919.26 or R.C. 3113.31;

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

(3) 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;

(4) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States that is 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;

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

The factors that the court must consider are:

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

(2) The mental health of the person;

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

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

(5) Whether setting bail at a high level will interfere with any treatment or counseling that the person or the family of the person is undergoing.

### *Operation of the bill*

The bill requires that a court 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, when setting bail for a person who is charged with committing an offense of violence against a family or household member and who is required by the bill to appear before the court for the setting of bail. These factors are (R.C. 2919.251(B)):

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

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

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

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

(5) Whether the person has access to deadly weapons or a history of using deadly weapons (replacement for existing factor);

(6) Whether the person has a history of abusing alcohol or any controlled substance (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).

## Miscellaneous

The bill states that the requirement 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 bill to appear in court to appear before the court for the setting of bail (R.C. 2919.251(D)(3)).

The bill 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).

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## COMMENT

1. "Offense of violence" means any of the following (R.C. 2901.01(A)(9)):

(1) A violation of R.C. 2903.01 (aggravated murder), 2903.02 (murder), 2903.03 (voluntary manslaughter), 2903.04 (involuntary manslaughter), 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.15 (permitting child abuse), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), 2903.22 (menacing), 2905.01 (kidnapping), 2905.02 (abduction), 2905.11 (extortion), 2907.02 (rape), 2907.03 (sexual battery), 2907.05 (gross sexual imposition), 2909.02 (aggravated arson), 2909.03 (arson), 2909.24 (terrorism), 2911.01 (aggravated robbery), 2911.02 (robbery), 2911.11 (aggravated burglary), 2917.01 (inciting to violence), 2917.02 (aggravated riot), 2917.03 (riot), 2917.31 (inducing panic), 2919.25 (domestic violence), 2921.03 (intimidation), 2921.04 (intimidating an attorney, victim, or witness in a criminal case), 2921.34 (escape), or 2923.161 (improperly discharging a firearm at a habitation or under circumstances related to a school), of division (A)(1), (2), or (3) of R.C. 2911.12 (certain forms of burglary), or of division (B)(1), (2), (3), or (4) of R.C. 2919.22 (certain forms of endangering children) or felonious sexual penetration in violation of former R.C. 2907.12;

(2) A violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States creating offenses substantially equivalent to those listed in the preceding paragraph;

(3) An offense, other than a traffic offense, under an existing or former municipal ordinance or law of Ohio or any other state or the United States, committed purposely or knowingly, and involving physical harm to persons or a risk of serious physical harm to persons;

(4) A conspiracy or attempt to commit, or complicity in committing, any offense listed in the preceding three paragraphs.

2. R.C. 2919.25 defines "family or household member" as any of the following:

(1) Any of the following who is residing or has resided with the offender:

(a) A spouse, a person living as a spouse, or a former spouse of the offender;

(b) A parent or a child of the offender, or another person related by consanguinity or affinity to the offender;

(c) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(2) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

The statute defines "person living as a spouse" as a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.

3. R.C. 2919.26 provides for temporary protection orders when a complaint has been filed alleging criminal damaging or endangering, criminal mischief, burglary, aggravated trespass, or an offense of violence committed against a family or household member. R.C. 3113.31 provides for protection orders or consent agreements when a petition has been filed alleging domestic violence.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-01-05	p. 179
Reported, H. Judiciary	04-21-05	p. 698

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