



Ohio Judicial Conference
The Voice of Ohio Judges

House Criminal Justice Committee
Judge Kathleen M. Rodenberg
Interested Party Testimony on House Bill 3

Chair Lang, Vice Chair Plummer, Ranking Member Leland, and members of the House Criminal Justice Committee, I thank you for this opportunity to submit interested party testimony for House Bill 3, Aisha’s Law, on behalf of the Ohio Judicial Conference. I am Judge Kathleen Rodenberg from the Clermont County Domestic Relations Court, where I have served since 2011. I also serve as the Chair of the Supreme Court of Ohio’s Advisory Committee on Domestic Violence and as a member of the OJC’s Domestic Relations Law & Procedure Committee. I have previously served as a domestic relations and municipal court magistrate and maintained a private legal practice.

The OJC thanks H.B. 3’s sponsors, Representative Boyd and Representative Carruthers for their attention to the matter of domestic violence. Our Civil, Criminal, and Domestic Relations Law and Procedure Committees have all reviewed and discussed the bill. While we agree with the sponsors’ goal of protecting victims of intimate partner violence, we are testifying as an interested party but feel we can offer our full support once some items are addressed.

Lethality Assessment Tools

One provision the OJC strongly supports is the use of evidence-based lethality assessment screening tools. The bill’s requirement that the police screen domestic violence victims using a lethality assessment may also be helpful to judges considering bail. The bill does not provide a mechanism, however, for the sharing of any assessment results with a bond officer or the court. We would be happy to work with the sponsors to find a way to share this information with the proper courts.

Statutory Expansion of Evidence

The first concern we would like to convey is about the bill’s proposal to expand the use of hearsay evidence via statute. These proposed changes could violate Article IV, Section 5(B) of the Ohio Constitution, which grants rule-making authority over courtroom procedures to the Supreme Court of Ohio. That constitutional provision provides a

process by which court rules are to be adopted and approved by the General Assembly once the Supreme Court has proposed them. Any court procedures developed through the Revised Code can spawn lengthy and costly litigation and are likely unenforceable. As the Supreme Court has explained, when statutes address the admission of evidence in Ohio courts conflict with the Ohio Rules of Evidence, those statutes have no effect.¹

For legal and practical reasons, then, the Supreme Court's Commission on the Rules of Practice and Procedure is the proper body for review of evidence rules because it is the body tasked under the Ohio Constitution with the job of studying and drafting any proposed changes to the Ohio Rules of Evidence in both civil and criminal cases. The OJC stands ready to assist the sponsors in working with the Supreme Court to develop new evidence rules to advance the bills' goals.

24/7 Court Domestic Relations and Juvenile Court Requirement

The concern of the OJC is the requirement for a court to be available to accept petitions for protection orders 24 hours a day and 7 days a week. The primary concern of every judge is the safety of the victim. Instructing a victim to appear in court after regular court hours may put the victim at more risk of harm. At most, the domestic and juvenile courts would have a "skeleton crew" and the courthouse, parking lots, and parking garages would be like ghost towns. Because victims are often tracked by their abusers through social media, abusers might see it as another opportunity to harass or assault the victim.

Although perhaps not as important as the personal safety of the victim, having courts open 24/7 is a dramatic and expensive departure from current practice. Although it should be noted that courts currently stay open to finish processing domestic violence protection orders that come in late in the day, this proposal would go far beyond that. Staffing a court (or two courts, in counties like mine that have a separate juvenile division) to accept protection order petitions requires not only a judge or magistrate, but also a bailiff, clerk, and domestic violence advocate. Some jurisdictions would also require a court reporter, although in my court the record is preserved via recording. There would be additional unfunded costs for maintenance, security and utilities. And it would have the unintended effect of making regular weekday protection order processing less effective by stretching court resources and staff too thin throughout the week.

Although this provision has been compared in previous committee testimony to the search warrant process, in reality the proposal is very different. For search warrants on evenings and weekends, officers typically communicate with judges by reliable electronic means (email or fax) or they come to the home of an assigned on-call judge. The courthouse does not remain open or staffed for after-hours search warrants. The proposal in HB 3 is particularly difficult to implement in the one-judge courts that predominate the rural parts

¹ See *In re Coy*, 67 Ohio St.3d 215, 218-219, 616 N.E.2d 1105 (1993) (a statute that purports to control the admission of evidence in Ohio courts is either "meaningless because the matter is already covered" by the Ohio Rules of Evidence, "or it is unconstitutional as it attempts to change the Evidence Rules").

of Ohio. Note, too, that a protection order is typically not effective until it has been formally served on – that is, delivered to – the person subject to the order, so nothing is expedited if an officer cannot serve the order until the following day.

Instead of a 24/7 court requirement, additional resources should be allocated for law enforcement and funding domestic violence shelters so they can provide more victims with a safe place to stay in emergencies. Courts cannot guarantee anyone's personal safety, and the mere existence of a protection order cannot stop a determined offender from committing violent acts.

An alternative currently being discussed by our Committees is the creation of an "emergency protection order" issued by a judge who finds probable cause after an officer calls an on-duty judge from the scene of a domestic violence incident. Alaska has an emergency protection order that lasts 72 hours, is entirely permissive (the officer may, but is not required to call the judge), and the protection order does not need to be served. In fact, the person who is the subject of the protection order doesn't even have to know the order exists but it could give the victim an added layer of protection. For example, if the abuser is trying to re-enter the home after bonding out on the criminal charge, the victim could call law enforcement and report that he or she has an "EPO." The responding officer would then know to serve the offender with the order and force him to leave the home.

One way to allow for emergency protection orders to be issued is to use the Alaska model as a starting point but to include additional provisions to address Ohio's unique legal system and any unintended consequences of the Alaskan system. We would be happy to work with the sponsors to develop a functional emergency protection order for Ohio. I thank you for considering my testimony. I am available to answer any questions you may have.