

TWO DAYS IN MAY

Legal and Legislative Updates

May 13-14, 2024

Overview

- ▶ Recent Trends via Case Law
- ▶ Recent Statutory and Rules Changes
- ▶ Major Pending State and Federal Legislation
- ▶ Form, Forms, Forms 2 years later.

Recent Trends and Cases

- ▶ Case Law
- ▶ Legislative Enactments
- ▶ Rules
- ▶ Pending Legislation

FIREARMS

FIEARMS- Relationship Between State and Federal Laws

- ▶ In the laws of the United States, federal pre-emption is the invalidation of a U.S. state law that conflicts with federal law
- ▶ Federal preemption is NOT applicable to federal firearm laws
- ▶ State firearm laws do NOT have to be identical to federal laws
- ▶ Federal prohibitions apply even if they are inconsistent with state laws
- ▶ Both can apply independently

What Determines Whether Federal Law Applies

- ▶ Federal authorities determine, by reference to the requirements of the federal firearm statutes, whether a protection order or misdemeanor conviction for disqualifies a person from possessing a firearm under federal law.
- ▶ Federal authorities generally enforce federal firearms laws
- ▶ State court judges do NOT make that determination

Gun Control Act: 18 USC 922(g)

- ▶ It is unlawful for any person to possess firearms or ammunition who:
 - ▶ (1) Has been convicted of a felony
 - ▶ (8) is subject to a qualifying order of protection
 - ▶ (9) Has been convicted of a qualifying misdemeanor crime of domestic violence

What is a Qualifying Protection Order?

18 USC 922(g)(8)

- ▶ A protection order will qualify if it meets these requirements:
 - ▶ Hearing with actual notice and an opportunity to be heard
 - ▶ Relationship requirement: intimate partner, child of intimate partner or child or respondent
 - ▶ Finding that defendant poses a credible threat to the physical safety of intimate partner; OR
 - ▶ Explicit prohibition of the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury
- ▶ Note: official use exception applies

Lautenberg
Amendment
18 USC
922(g)(9)

- ▶ It is a federal crime to possess a firearm and/or ammunition after a conviction of a qualifying misdemeanor crime of domestic violence
- ▶ Note: applicable to law enforcement-no official use exception

What is a Qualifying Misdemeanor Crime of Domestic Violence?

- ▶ Must be a misdemeanor under federal, state or tribal law.
- ▶ Misdemeanor has as an element the use or attempted use of physical force or threatened use of a deadly weapon.
- ▶ Misdemeanor must be committed by a current or former spouse, parent or guardian, current or former cohabitant, by a person similarly situated to a spouse, parent, guardian of the victim or by a parent with whom the victim shares a child in common
- ▶ Right to jury trial (or waiver)
- ▶ Right to counsel (or waiver)
- ▶ Has not received an expungement, pardon or civil rights restoration

Defining the Qualifying Relationship

- ▶ An intimate partner for purposes of the firearms ban:
 - ▶ A person
 - ▶ Spouse of the person
 - ▶ Former spouse of the person
 - ▶ An individual who is a parent of a child the person
 - ▶ An individual who cohabits or who has cohabited with the person
- ▶ For purposes of a misdemeanor crime of domestic violence, “or by a person who has a current or former dating relationship with the victim. 18 USC 921 and 922. (Bipartisan Safer Communities Act of 2022)
- ▶ The term dating relationship means a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature. It can be shown by consideration of length, nature, frequency and type of interaction between the persons, but not those in a causal or business or social context.

Definition of Use of Force

- ▶ “Use of force” element of 18 USC 922(g)(9) is satisfied by an “offensive touching.” *United State v. Castleman*, 134 S. Ct. 1405
- ▶ “Reckless acts” are sufficient for finding “use of force” This definition is broader than that found in other federal prohibitions involving the use of physical force because of the unique context of domestic violence. *United States v. Voisine*, 778 F.3d 176 (2016)
- ▶ DV statute restraining “use of force” need not track identical language of 922(8)(C)(ii) only “an ordinary, contemporary, common meaning of its words.” *United States v. DuBose*, 598 F.3d 726

Must the Crime be called Domestic Violence?

- ▶ Under *United States v. Hayes*, 555 U.S. 415:
 - ▶ The misdemeanor crime need not be called “domestic violence” and the statute need not require as an element a domestic relationship between the defendant and the victim
 - ▶ Nevertheless, one of the requisite relationships must exist in fact

Documenting the Misdemeanor Crime of DV

- ▶ Documentation of required offense elements **MUST** be in court records, including the relationship
 - ▶ Regarding the use/attempted use of physical force or threatened use of a deadly weapon element, US Supreme Court case law (*Shepard* is the leading case) limits evidentiary sources allowed to establish this element:
 - ▶ Terms of the charging document (but this alone is insufficient)
 - ▶ Terms of a plea agreement or transcript of a colloquy between judge and defendant in which the factual basis for the plea was confirmed b defendant
 - ▶ Or some comparable judicial record of this information

The judgment/record of conviction is the best way to document the requisite elements and findings in the JE re: relationship are essential

PROTECTION ORDER NOTICE TO NCIC (Required fields appear in bold print)

- Initial NCIC Form
 Amended NCIC Form
 Removal from NCIC
 Service Completed (Law Enforcement Agency: If unchecked, presume Service Unknown)

Pursuant to Rules 10.01, 10.02, 10.03, and 10.05 of the Rules of Superintendence for the Courts of Ohio, this information shall be promptly entered into the National Crime Information Center index.

SUBJECT NAME _____
 (LAST) (FIRST) (M.I.)

ADDRESS _____
 (STREET) (CITY) (STATE) (ZIP)

PHYSICAL DESCRIPTION: HGT _____ WGT _____ HAIR _____
 EYES _____ RACE _____ SEX M F

NUMERICAL IDENTIFIER (NOTE: Only ONE of the 4 numerical identifiers is needed.)

1. SSN _____ - _____ - _____ 2. DOB _____ / _____ / _____

3.* DRIVER'S LIC. NO. _____ STATE _____ EXPIRATION YR. _____

4.* VEHICLE LIC. NO. _____ STATE _____ EXPIRATION YR. _____

(* If #3 or #4 is used as a numerical identifier, entire line MUST be completed.)

BRADY DISQUALIFIERS:

Pursuant to 18 U.S.C. 922(g)(8), a "yes" response to all three Brady questions disqualifies the subject from purchasing or possessing any firearms, including a rifle, pistol, revolver, or ammunition.

- Does the Order protect an intimate partner or child(ren)? YES NO
- Did the subject have notice of the hearing and opportunity to participate in the hearing regarding the Order? YES NO
- Does the Order find the subject a credible threat or explicitly prohibit physical force? YES NO

CASE / ORDER NO. _____ (15 DIGIT MAXIMUM) **Is order term of probation/ community control?** YES NO
COURT ORIGINATING AGENCY IDENTIFIER _____ (9 DIGIT ORI ASSIGNED BY NCIC)
NAME OF JUDGE/MAGISTRATE _____
DATE OF ORDER ____/____/____ **EXPIRATION OF ORDER** ____/____/____
 (IN R.C. 2919.26 AND 2903.213 CASES, "NONEXP" MAY BE USED)

TERMS AND CONDITIONS OF ORDER (Mark all that are applicable):

- 01 The subject is restrained from assaulting, threatening, abusing, harassing, following, interfering, or stalking the protected person and/or the child(ren) of the protected person.
- 02 The subject shall not threaten a member of the protected person's family or household.
- 03 The protected person is granted exclusive possession of the residence or household.
- 04 The subject is required to stay away from the residence, property, school, or place of employment of the protected person or other family or household member.
- 05 The subject is restrained from making any communication with the protected person, including but not limited to, personal, written, or telephone contact, or their employer, employees, or fellow workers, or others with whom the communication would be likely to cause annoyance or alarm the victim.
- 06 The subject has visitation or custody rights of the child(ren) named in this Order.
- 07 The subject is prohibited from possessing and/or purchasing a firearm or other weapon as identified in the Miscellaneous Field.
- 08 See the Miscellaneous Field for comments regarding the specific terms and conditions of this Order.
Miscellaneous comments: _____

- 09 The protected person is awarded temporary exclusive custody of the child(ren) named.

OHP
DATA

ONLY

#EPO

Notice Requirement (applies in Civil Protection Orders/Criminal Cases)

- ▶ ORC 3113.31(F)(2): Upon the issuance of a protection order or the approval of a consent agreement under this section, the court shall provide the parties to the order or agreement with the following notice orally or by form:
- ▶ "NOTICE
- ▶ As a result of this order or consent agreement, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. 922(g)(8) for the duration of this order or consent agreement. If you have any questions whether this law makes it illegal for you to possess or purchase a firearm or ammunition, you should consult an attorney."

Criminal Laws Regarding Firearms and Domestic Violence

- ▶ Criminal DV laws: RC 2919.25
- ▶ Bail Factors: Whether the person has access to deadly weapons or a history of using deadly weapons;
- ▶ Ohio has no specific law prohibiting individuals convicted of domestic violence misdemeanors from purchasing or possessing firearms or ammunition
- ▶ Ohio law requires a police officer who is responding to the scene of an alleged incident of domestic violence or a violation of a protection order to seize any weapon used, brandished, or threatened to be used in the incident
- ▶ O.R.C. § 2935.03(B)(3)(h)

Application to Ohio Law

- ▶ RC 2919. 25(A) and (B) satisfy the requirement and must have as an element the use or attempted use of physical force or threatened use of a deadly weapon
- ▶ Assault crimes against a FHM satisfy the requirement
- ▶ Does “Disorderly Conduct” satisfy the requirement?
 - ▶ RC 2917.11 Disorderly Conduct
 - ▶ (A) No person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following
 - ▶ (1) Engaging in fighting, in threatening to harm persons or property or in violence or turbulent behavior
 - ▶ *State v. Majika*, 2002-Ohio-1378 (9th Dist.)

Civil Protection Orders and Firearms in Ohio

The Ohio civil protection order statute does not include specific relief related to firearms

(unlike most states, which have explicit provisions addressing firearms)

Civil Protection Orders and Firearms in Ohio

The Ohio civil protection order statute does include a “catch-all” provision:

O.R.C. 3113.31(E)(1)

“(h) Grant **other relief that the court considers equitable and fair**, including, but not limited to, ordering the respondent to permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property”

Ohio Forms Regarding Firearms and DV

Ohio's Civil/Criminal Protection Order Forms

13. **RESPONDENT SHALL NOT POSSESS, USE, CARRY, OR OBTAIN ANY DEADLY WEAPON, INCLUDING FIREARMS, AND AMMUNITION** at any time while this Order remains in effect in order to bring about a cessation of violence. Furthermore, Respondent may be subject to firearms and ammunition restrictions pursuant to 18 U.S.C. 922(g)(1) through (9), 18 U.S.C. 922(n), or R.C. 2923.13. [NCIC 07]

RESPONDENT IS EXCEPTED only for official use pursuant to 18 U.S.C. 925(a)(1), if no other firearms and ammunition prohibitions apply.

14. **RESPONDENT SHALL TURN OVER ALL DEADLY WEAPONS, INCLUDING FIREARMS, AND AMMUNITION** owned by Respondent or in Respondent's possession to the law enforcement agency that serves Respondent with this Order no later than _____ or as follows:

Any law enforcement agency is authorized to accept possession of deadly weapons, including firearms, and ammunition pursuant to this paragraph and hold them in protective custody for the duration of this Order. [NCIC 07]

Law enforcement shall immediately notify the Court upon receiving Respondent's deadly weapons, including firearms, and ammunition into protective custody as set forth in this Order.

Upon the expiration or termination of this Order, Respondent may reclaim any deadly weapons, including firearms, and ammunition held in protective custody by law enforcement pursuant to this Order unless Respondent is otherwise disqualified as verified by a check of the NCIC protection order file.

15. **RESPONDENT'S CONCEALED CARRY WEAPON LICENSE**, if any, is now subject to R.C. 2923.128.

FORM 10-F: NOTICE OF RECEIPT

IN THE COURT OF _____
_____ COUNTY, OHIO

_____ : Case No. _____
Petitioner

_____ : **NOTICE OF RECEIPT**
v.

_____ :
Respondent

Pursuant to an ex parte or full hearing civil or criminal protection order issued pursuant to R.C. 2151.34, 2903.213, 2903.214, 2919.26, or 3113.31, law enforcement was instructed to notify the Court upon receiving Respondent's deadly weapons, including firearms, and ammunition for protective custody.

I hereby notify the Court that on _____ Respondent turned in deadly weapons, including firearms, and ammunition for protective custody. Attached is a copy of the receipt.

Sup. R. Form 10-F

The deadly weapons, firearms, and ammunition were not turned in for protective custody in accordance with the Order. Respondent reported the deadly weapons, including firearms, and ammunition were:

Transferred to a federal firearms licensee: _____

Other: _____

Officer and Badge Number

Law Enforcement Agency

Date

This Notice shall be returned to the Clerk of Court for entry into the docket

Sup. R. Form 10-F (2)

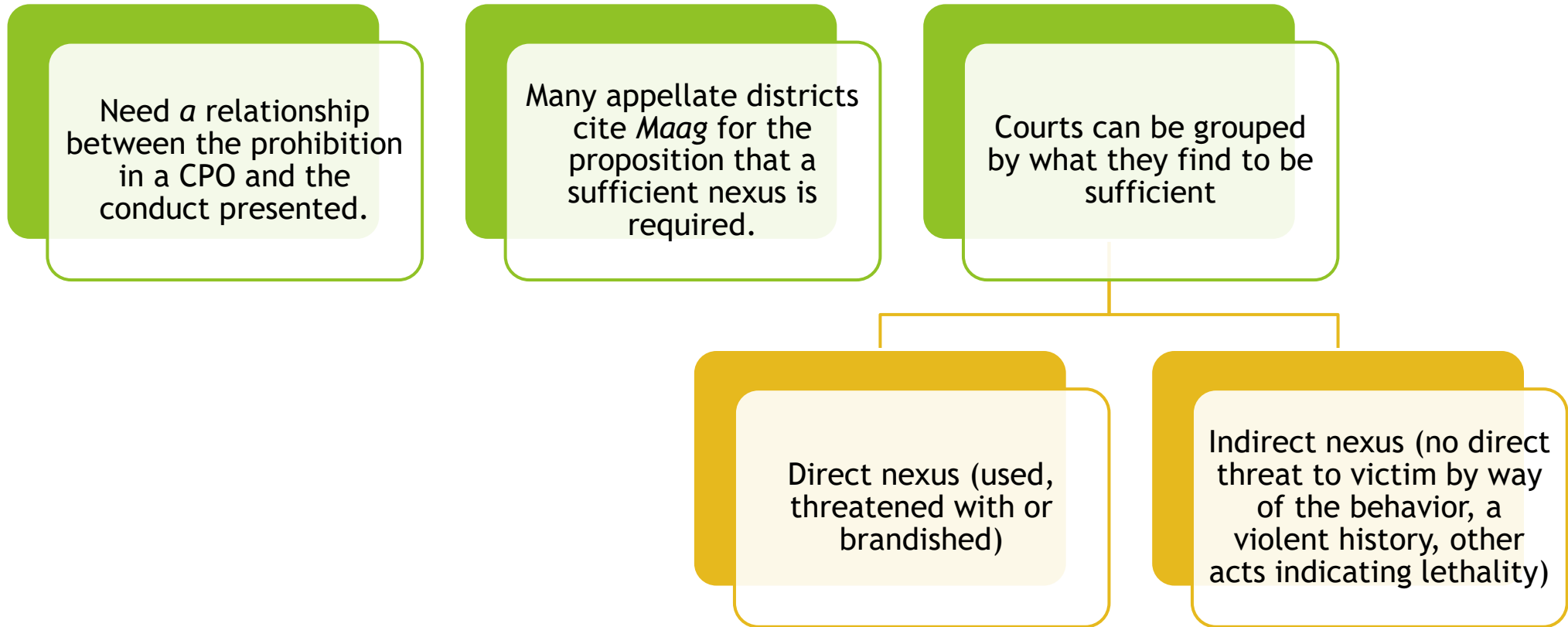
Does the Second Amendment's Right to Bear
Arms Permit or Restrict State Laws
Addressing Firearms and Domestic Violence?

Ohio Law: Nexus Argument

Question presented: Whether the terms in a CPO that prohibit respondent from possessing, using, carrying or obtaining a deadly weapon or using alcohol or drugs (for example) are supported by the evidence?

The case decisions generally note that while a trial court has discretion to consider remedies that are equitable and fair, that discretion is not limitless. In determining the reasonableness of a restriction in a CPO, there must be a connection between the behavior (alcohol consumption; firearms) and the restriction (Prohibition against use of firearms during the duration of CPO). **Thus, the restriction must bear a sufficient nexus to the conduct the court is attempting to prevent.**

Ohio scheme: Nexus between restriction and behavior



And Then Came.....

- ▶ *New York State Rifle v. Bruen* (2022) landmark firearms decision of US Supreme Court related to the Second Amendment that is already having national ramifications.
- ▶ **Q: Whether second amendment allows government to prohibit ordinary law-abiding citizens from carrying handguns outside home for self defense, and whether State's denial petitioners' applications for concealed-carry licenses for self defense violated 2nd Amendment?**
- ▶ IN a 6-3 decision NY's law was unconstitutional and ruled that the ability to carry a pistol in public was constitutional under Second Amendment.

Bruen Summary

- ▶ *N.Y. State Rifle & Pistol Association v. Bruen*
 - ▶ Changed framework on 2nd amendment
 - ▶ Was a civil proceeding
 - ▶ No split circuits
 - ▶ Did away with two step analysis of *Heller*
 - ▶ ***One step*: just look at text and history of Second Amendment to determine if an historical analogue**
 - ▶ Rejected notion that dangerous people can be prohibited

Bruen Continued

- ▶ In the wake of *Bruen*, several lawsuits involving federal and state gun regulations have been filed, stressing on the judiciary the need to evaluate the regulation not in consideration of the public good,” but in light of the “historical tradition of firearm regulation,” a phrase penned by the author Clarence Thomas. Several of these cases have successfully overturned long-standing regulations due to the regulations being not of “historic tradition.”
- ▶ Among the federal lawsuits filed that have blocked enforcement include those that prevented gun ownership from those convicted of misdemeanor domestic violence, persons subject to a CPO, felony defendants and drug users.
- ▶ So, what is “historic tradition/analog?”

Rahimi Decision-US Supreme Court will decide the question presented

- ▶ **Facts:** Between December 2020 and January 2021, Zackey Rahimi was involved in a series of violent incidents in Arlington, Texas, including multiple shootings and a hit-and-run. Rahimi was under a civil protective order for alleged assault against his ex-girlfriend, which explicitly prohibited him from possessing firearms. Police searched his home and found a rifle and a pistol, leading to Rahimi's indictment for violating federal law 18 U.S.C. § 922(g)(8), which makes it unlawful for someone under a domestic violence restraining order to possess firearms. Rahimi moved to dismiss the indictment on constitutional grounds but was denied, as his argument was foreclosed by *United States v. McGinnis*, 956 F.3d 747 (5th Cir. 2020).
- ▶ Rahimi pleaded guilty but continued his constitutional challenge on appeal. As the appeal was pending, the U.S. Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 579 U.S. ___ (2022).
 - ▶ Question presented
- ▶ Does 18 U.S.C. § 922(g)(8), which prohibits the possession of firearms by persons subject to domestic-violence restraining orders, violate the Second Amendment?

Other Cases Interpreting *Bruen*

- ▶ *Rahimi* decision only binding on 5th Cir. (Texas, LA and Miss.)
- ▶ Another case from 6th Cir but a district case: *U.S v. Combs*, Eastern District of Kentucky in which defendant was subject to a DVCPO and prohibited from possessing a firearm under 18 USC 922(g)(8). Applied *Bruen* analysis to invalidate the federal prohibition. (2023)
- ▶ And recently, a common pleas judge from Lucas County, Ohio found in *State v. Merriweather* that defendant's CPO did not prohibit her from possessing a firearm. Court recognized the proceedings were regular and the CPO itself would not be challenged and that the CPO is the type contemplated by 18 USC 922(g)(8). (2023)- awaiting oral arguments in the 6th district court of appeals.

Merriweather Case

- ▶ The *Merriweather* court found that as in *Rahimi*, the firearms prohibition in the CPO “works to eliminate the second amendment right of individuals subject merely to civil process.” Such restriction fails to pass the historical tradition test according to *Rahimi* and the state herein offers no contrary historical analysis. Moreover, it is the state which bears the burden of “justifying its regulation by demonstrating that it is consistent with the nation’s historical tradition of firearm regulation.”
- ▶ “As the concurrence in *Rahimi* summarizes “It is incumbent upon lower courts to implement *Bruen* in good faith and to the best of our ability.” Neither the state nor defendant cite any case that diverges from *Rahimi*’s analysis and holding. The public policy implications of *Rahimi* must give way to the plain meaning of the Second Amendment as interpreted by the US Supreme Court. This court finds that the defendant’s CPO did not prohibit her from possessing a firearm.

Other decisions that have remanded to trial court or are awaiting decisions

- ▶ **There are several other cases that have remanded to the trial court to apply Bruen decision:**
 - ▶ *Wilson v. Wilson*, 2023-Ohio-4243 even though Ohio has not codified federal law, the decisions of another court not binding until supreme court speaks. No reason to vacate the firearms restrictions as unconstitutional.
 - ▶ Supreme Court of Ohio has accepted the case but will hold *sua sponte* until the US Supreme Court has decided *Rahimi*.

Civil Protection Order concerns

- ▶ Renewal-still out there with no clarity
- ▶ Threats
- ▶ Venue-Where to file
- ▶ Confidentiality/Safe at Home/Custody
- ▶ Continuances
- ▶ Must Evidence in a DV Case conform to Petition?
- ▶ Past Acts and Time frames
- ▶ What is a Full Hearing?
- ▶ Bodily Injury v. Physical Harm

Renewal

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RENEWAL OF CIVIL PROTECTION ORDER



Per RC 3113.31(E)(3)(c), “a CPO is renewed in the same manner as the original order was issued or approved.”



So, how is this interpreted?

Procedurally, must it be the “same” meaning the filing of another CPO, same service or can it be by motion with a certified mail service request?

If the original order was granted by consent, must the renewal be by consent?

What are the Questions that Must be Answered?

- ▶ What does it mean to renew a CPO?
- ▶ What is the procedure for renewal?
- ▶ Where a party files a motion to renew and the CPO is about to or already expired, is the court obligated to extend the CPO to avoid a lapse in the order?
- ▶ Can a CPO be renewed after the order has expired?
- ▶ How is service effectuated?
- ▶ Does the statute require a new act of violence?
- ▶ A present threat of future violence?
Morris v. Stonewall, 1999WL 1037507 (12th)
- ▶ Can the renewed order be more expansive in scope than the original order? *Woolum*
- ▶ Is the standard different when the underlying order is a sexually oriented offense PO?
- ▶ Can a CPO be renewed based on the past history of violence and nothing more?
- ▶ What about based on a generalized fear?
- ▶ What about if the only evidence presented was the adverse health impact on P by the continued presence of R.

So, What Did We Learn?

- ▶ Courts appear to interchange terms: “extend” and “renew.” Some even use “modify” to indicate the same thing. (although that is neither extending or renewing the order)
- ▶ Some courts depend on some evidence of a “present threat of future violence (even though the threat does not rise to the level of DV, such as a threat to kidnap the kids)
- ▶ Other courts expect that there be a new act of violence in order to extend it.
- ▶ Specific finding of fact are necessary
- ▶ If order is about to expire, ask for/convert another ex parte CPO
- ▶ Need for standardized forms

Threats

What is the mental state needed for “true threats” conviction?

- ▶ Federal appeals courts have split on whether a conviction for threatening behavior focuses on proof of a subjective intent to threaten or an objective test that considers whether a reasonable person would view the statement as threatening.
- ▶ The US Supreme Court heard case of a convicted stalker to decide mental state needed to be convicted for true threats that are not protected by First Amendment. *Counterman v. Colorado* (2023)
- ▶ *Counterman* is an update to *Elonis v. United States* in which US Supreme Court considered what kind of mental state is required for a true-threats conviction, in effect, whether a conviction for threatening another requires proof that defendant meant what he said in a literal sense. In *Elonis*, the Supreme Court avoided the constitutional issue, holding that the federal threats statute requires consideration of defendant’s mental state and intent.
- ▶ *Counterman* question: **Can a stalking statute prohibit threatening speech without regard to the speaker's mental state?**

Counterman decision

- ▶ On June 27, 2023, the US Supreme Court held a criminal prosecution based on a true threat of violence requires proof that defendant subjectively understood the threatening character of the statement made such that making the statement was at least reckless. (reversal of appellate court)
- ▶ Facts; Counterman sent hundreds of Facebook messages to a local musician, creating new accounts to circumvent her from blocking them. The musician viewed these as threats to harm or surveil her. He was charged but argued that his messages fell within the protections of the 1st Amendment because they could not be true threats if he did not have a subjective understanding that the messages were threatening.
- ▶ Although true threats are not protected speech under the 1st Amend., a court must apply a subjective test to determine if the statement is a true threat of violence which standard is required to avoid a chilling effect on otherwise protected speech. *Mens rea* is reckless.

State Cases re: Threats

- ▶ *State v. Thomas*, 2023-Ohio-2291-What is “imminent” in regard to a threat? In a threat case, **state of mind of victim is relevant**. Is a threat to kill a conditional threat? Threat encompasses statements or conduct intended to impart a feeling of apprehension. Fact that she went to police suggests her belief that PH was imminent.
- ▶ *C.T. v. N.Y.*, 2023-Ohio-3029-past incidents of DV and threat where P had a reasonable belief that she was in imminent danger. (Need both incident and continued danger). Focused on *Fleckner* test which looks at history of abuse and has both objective and subjective elements
- ▶ *J.M. v. S.M.*, 2023-Ohio-4803-threat of violence is DV if those threats result in reasonable fear using an objective/subjective test and whether **fear** is objectively reasonable. Need new fear, not past acts of fear.
- ▶ Fear inspired by threat of force.

State Cases: Threats

- ▶ *State v. France*, 2023-Ohio-2129, Threat to kill her. offense of threat DV requires fear inspired by threat of force.
- ▶ *Lorenz v. McDonald*, 2023-Ohio-3703 Court found that the “evidence must reveal a **nexus** between the communication directed to a P with subsequent actual fear. Evidence must be unequivocal.

Venue

- ▶ Venue is the geographic division either county or district where a case should be tried.
- ▶ **Civ. R. 3(B)(10) states that in actions for CPO, in the county in which petitioner currently or temporarily resides.**
- ▶ Does this mean that it can be tried in other counties-she lives in Cuyahoga, but abuse was in Franklin?
- ▶ See also RC 3113.31 in which the court is where the petitioner resides. RC 3113.31 (A)(2)
- ▶ One could file a motion to transfer venue or motion arguing improper venue.
- ▶ Must be raised before hearing.

Confidentiality and Safe at Home

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Confidentiality, Safe at Home and HB 93

- ▶ Safe at Home-use of PO box provided by Sec'y of State based on fear of DV, Stalking, HT, sexual violence
- ▶ Last legislative session, GA enacted HB93, which among other aspects, provides a process by which one of the parties in a custody or CS case can require disclosure but must be given notice and a hearing before the court may disclose a participant's confidential information to another. If another party to the proceeding requests the information, the court must direct that party to file a pleading explaining why the disclosure is necessary.
- ▶ Before allowing that disclosure, the court must schedule a hearing, provide a copy of the pleading to participant and give parties adequate notice of hearing. The person requesting must show, by clear and convincing evidence, that the disclosure is necessary and does NOT pose a risk of harm to the participant or child. If the burden is met, the court must document its findings of fact and may either disclose the information or direct the participant to do so. Even if the court intends to do so on its own, it must hold a hearing and comply with the above. RC 111.46(D)

Continuances

The background features a complex, abstract design of overlapping, semi-transparent green polygons. The colors range from light, pale greens to deep, dark forest greens. The shapes are primarily triangular and quadrilateral, creating a sense of depth and movement. The design is concentrated on the right side of the page, with the left side being mostly white.

Continuances

- ▶ Per RC 3113.31, continuances can be granted a) to perfect service; b) to allow either party to get counsel 3) by consent and d) for other good cause. RC 3113.31(D)(2)(i-iv).
- ▶ *R.S. v. B.A.* 2023-Ohio-3364 -grant or denial of continuance is a matter within the discretion of trial court.
- ▶ *C.M.R. v. B.T.B.S.*, 2023-Ohio-1973-Where the granting of a continuance is necessary to allow a party a reasonable opportunity to obtain counsel or to otherwise prepare a case, the denial of a request for continuance may violate due process rights. [*R.H. v. J.H.*, 2020-Ohio-3402] However, not every denial is a denial of due process
- ▶ In evaluating a request, court must look at: length of delay, whether other continuances have been requested and received, inconvenience to parties, delay is for legitimate reason not dilatory, purposeful or contrived, whether R contributed to the circumstances which gave rise to the request and other relevant factors per *Unger* and which could include the ability of the attorney to prepare the case. Analysis is useful for petitioners.

Procedural issues

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the right side of the slide, creating a modern, layered effect. The text 'Procedural issues' is positioned on the left side of the slide in a clean, sans-serif font.

Must the court restrict the evidence to the allegations in petition?

- ▶ *Dietrich v. Dietrich*, 2023-Ohio-4822 R argued that court improperly allowed evidence that exceeded the scope of the initial allegations in the vague petition.
 - ▶ If true, this implies that issues not raised in the pleadings were tried by magistrate.
 - ▶ See Civ. R. 15(A) stating that parties can amend their pleadings by leave of court. And that leave will be freely given when justice requires.
 - ▶ Civ. R. 15(B) allows for the amendment of pleadings to conform to evidence.

Time Frames within which to file a CPO

- ▶ *R.S. v. J.H.*, 2022-Ohio-40 (5th)
 - ▶ RC 3113.31 provides no specific time restrictions for bringing allegations to the court in petitioning for a PO; a delay in filing petition not a problem
 - ▶ He said, she said-DV rarely happens in front of others.
 - ▶ Medical evidence is absent in many cases.
 - ▶ Often the only evidence is the testimony of the victim.
 - ▶ Fear can, in part, be based on history of violence.
 - ▶ Orders must be crafted for the case before it-boiler plate provisions as to contact should not always be ordered.
 - ▶ See *Felton v. Felton*.

What is the definition of bodily injury?

- ▶ Does bodily injury=physical harm,
 - ▶ *MP v. TP*, 2024-Ohio-542,
 - ▶ *Wilson v. Wilson*, 2023-Ohio-4243

Felton v. Felton: the most important case

- ▶ Created a two-tiered standard: the incident and continued danger
- ▶ Burden of proof-Preponderance of the Evidence
- ▶ Answer/responsive pleading to a CPO unnecessary
- ▶ Understanding the dynamics of DV, such that DV does not take place with an audience
- ▶ Victim testimony enough to demonstrate domestic violence

Criminal Issues

The background features a complex, abstract design of overlapping, semi-transparent green triangles and polygons. The colors range from a light, pale green to a deep, dark forest green. The shapes are layered, creating a sense of depth and movement. The overall composition is modern and clean, with the text 'Criminal Issues' positioned on the left side of the frame.

EVIDENTIARY ISSUES

- ▶ *Crawford* is still around. (so is Confrontation Clause).
- ▶ Forfeiture by wrongdoing- *State v. Harvey*, 2022-Ohio-4650 (use of SANE).
- ▶ Expert witness and lay testimony-review *State v. Haines*, 112 Ohio St. 3d 393 (2006).
 - ▶ **Important in many cases this year and will be crucial in future strangulation cases**
 - ▶ *State v. Hemingway*, 2023-Ohio-1075 (Officer as corroboration)
 - ▶ *State v. Watkins*, 2022-Ohio-500 (Officer testimony)
 - ▶ *State v. Halfhill*, 2022-Ohio-3242 (deputy took photos; court debunked idea that someone else must have seen or witnessed the incident or else victim lying.)
 - ▶ *State v. Cleavenger*, 2022-Ohio-2942 (SANE testified about effect of trauma on memory and lay v. expert testimony. Opinion testimony based on experiences and perceptions.

Crawford v. Washington

- ▶ Crawford (defendant) was charged with assault and attempted murder after stabbing a man who allegedly tried to rape his wife, Sylvia. Prosecution introduced evidence of a recorded statement by Sylvia describing the stabbing to police. The trial court allowed the tape to be played for the jury and convicted Crawford. Sylvia was unavailable to testify at trial because of the state marital privilege.
- ▶ The Washington Court of Appeals reversed, holding that the taped statement violated Crawford's Sixth Amendment confrontation right and did not bear any guarantees of trustworthiness as were required under *Ohio v. Roberts*, 448 U.S. 56 (1980).
- ▶ The Washington Supreme Court reversed, agreeing with the trial court that the statement bore guarantees of trustworthiness and reinstating the conviction. The United States Supreme Court granted certiorari.

Crawford Rule

- ▶ The *Crawford* rule:
 - ▶ Testimonial statements by witnesses who are not subject to cross-examination at trial may not be admitted unless the witness is unavailable and there has been a prior opportunity for cross-examination.

Crawford and progeny: Testimonial statement

- ▶ 1. No comprehensive definition. The *Crawford* Court declined to define the term testimonial. Nontestimonial statements include (offhand remarks, casual remarks to acquaintances, business records, and statements in furtherance of the conspiracy) and a few examples of testimonial statements (prior testimony, plea allocutions, and police interrogations; *Crawford* itself involved statements made during a police interrogation).
- ▶ Having categorized these few types of evidence, the Court left to the lower courts the difficult task of categorizing the many other types of evidence offered in criminal trials.
- ▶ a. *Davis v. Washington*, 547 U.S. 813 (2006), was a consolidation of two separate domestic violence cases, both raising questions about the testimonial nature of statements by victims to police officers and their agents. *Davis* articulated a two-part rule for determining the testimonial nature of statements to the police or their agents:
 - ▶ (a) Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency; and
 - ▶ (b) Statements are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past facts potentially relevant to later criminal prosecution

Crawford etc.

- ▶ **What is an emergency? And what constitutes an ongoing emergency and when does it end?** The case law in this area is still evolving.
- ▶ **i. Ongoing emergency.** The following factors support the conclusion that an emergency was ongoing: The perpetrator remains at the scene and is not in law enforcement custody. The perpetrator is at large and presents a present or continuing threat. Physical violence is occurring. The location is disorderly. The location is unsecure. Medical attention is needed or the need for it is not determined. The victim or others are in danger. The questioning occurs close in time to the event. The victim or others call for assistance. The victim or others are agitated. No officers are at the scene.
- ▶ **ii. No ongoing emergency.** The following factors support the conclusion that an emergency ended or did not exist: The perpetrator has fled and is unlikely to return. The perpetrator is in law enforcement custody. No physical violence is occurring. The location is calm. The location is secure. No medical attention is needed. The victim and others are safe. There is a **significant** lapse of time between the event and the questioning. No call for assistance is made. The victim or others are calm. Officers are at the scene
- ▶ **d. What is the primary purpose of the interrogation?.**

Exceptions to Hearsay rules in light of Crawford and its progeny

- ▶ Exceptions to the Crawford Rule
- ▶ A. **Offered for a purpose other than the truth of the matter asserted.** Crawford only comes into play when the state seeks to introduce hearsay statements of a witness who is not subject to cross-examination at trial. If the statement is offered for purpose other than the truth of the matter asserted, it is not hearsay and there is no Crawford issue. Examples of purposes other than the truth of the matter asserted include: for impeachment and corroboration, as the basis of an expert's opinion, and to explain the course of an investigation.
- ▶ B. **Forfeiture by wrongdoing.** Forfeiture by wrongdoing is an equitable doctrine. In this context, it applies when a defendant engages in wrongful acts that silence the witness. When the doctrine applies, the defendant is deemed to have forfeited his or her Crawford Primer - 7 confrontation clause rights. Put another way, if the defendant is responsible for the witness's absence, he or she cannot then complain of that absence. A classic scenario is when the defendant successfully intimidates a witness with the result that the witness does not appear at trial. 1. Intent to silence required. In *Giles v. California*, 128 S. Ct. 2678 (2008), the U.S. Supreme Court clarified that for the doctrine to apply, the state must establish that the defendant engaged in the wrongdoing with an intent to silence the witness. 2. Procedural issues. a. Evidence required. When the state argues for application of forfeiture by wrongdoing, the trial judge will have to hear evidence on the issue.
- ▶ C. **Dying declarations.**

Ohio Cases interpreting *Crawford*

- ▶ *State v. Garry Smith*-Supreme Court of Ohio grant cert.
- ▶ *State v. Johnson*-jurisdictional memo requested the Court also grant cert.
- ▶ *State v. Wilcox*-2023-Ohio-2940 body cam and ongoing emergency
- ▶ *State v. Hommes*, 2023-Ohio-4868-Forfeiture analysis.
- ▶ *State v. Patterson*, 2023-Ohio-3579-Forfeiture.
- ▶ *State v. Corriell*, 2023-Ohio-4113-There is no per se amount of time after which a statement can no longer be considered an excited utterance. Body cam and ongoing emergency.

Recantation

- ▶ So, which is it? Empowerment or evidence-based prosecution at insistence of prosecution
- ▶ What a practitioner needs to know:
 - ▶ Whys she stays
 - ▶ The cycle theory of violence/ Stockholm syndrome
 - ▶ Why she returns
 - ▶ Overcoming the reluctant victim

Conflicting Orders: Parenting, CPOs and Criminal cases

- ▶ Addressing conflicting and competing orders:
 - ▶ PRR and subsequent CPO
 - ▶ CPO and subsequent PRR
 - ▶ Is determining or has determined
 - ▶ Custody proceeding and BI factors
 - ▶ Temporary or permanent orders
 - ▶ PRR and subsequent NCO
 - ▶ PRR and subsequent TPO
 - ▶ CPO and subsequent TPO
 - ▶ TPO and subsequent CPO

Strangulation

Who is the strangler???

Choking is not domestic violence. Choking is what happens with food!!!

Strangulation is when one puts their hands, arm, or ligature around the other person's neck and squeezes (think also of suffocation - similar oxygen to brain limitation)

Important to change the way we look at this

Nonvisible injuries

- Hoarseness, raspy voice, difficulty breathing/swallowing, throat pain, coughing, loss of voice, lightheadedness, nauseousness

Visible injuries

- Objective injuries include tiny red spots in face, bloody red eyes, red marks and scratches and bruising to neck
- Subtle injuries to eyes, inside mouth and around shoulders and chest region

Strangulation Myths

- ▶ If a victim was really strangled, they would:
 - ▶ Be dead
 - ▶ Have visible injuries (or other immediately visible injury)
 - ▶ Report to police; offender would be charged with a felony
 - ▶ Have sought medical attention
 - ▶ Be taken seriously by medical professionals
 - ▶ Not have recanted or gone back to the offender
- ▶ If a victim is screaming, that means all is fine...she is still breathing

R.C. 2903.18-FELONY STRANGULATION

- ▶ Definition of strangulation or suffocation: “any act that impedes the normal breathing or circulation of the blood by applying pressure to the throat or neck or by covering the nose and mouth.”
 - ▶ Knowingly cause “serious physical harm” is F2
 - ▶ Knowingly “create a substantial risk of serious physical harm” is F3
 - ▶ Knowingly cause OR create a substantial risk of “physical harm” is F5
 - ▶ If a FHM or dating partner, F4
 - ▶ If a FHM or dating partner and there has been a prior conviction to felony offense of violence, F3
 - ▶ If a FHM or dating partner and defendant knew victim was pregnant, F3

Affirmative Defense/Definitions

- ▶ Affirmative defense: If the act was part of a medical or other procedure undertaken to aid or benefit victim.
- ▶ “Serious physical harm” means 1) any physical harm that carries a substantial risk of death; 2) any physical harm that involves some permanent incapacity, whether partial or total or that involves some temporary, substantial incapacity; 3) any physical harm that involves some permanent disfigurement or involves some temporary, serious disfigurement; 4) any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain; or 5) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment.”

Definitions (2)

- ▶ “Physical harm”: any injury, illness or other physiological impairment, regardless of its gravity or duration.
- ▶ “Substantial risk”: a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.
- ▶ “Knowingly”: RC 2901.22. A person acts knowingly, regardless of purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.
- ▶ “Offense of violence” as defined in RC 2901.01(9)(a).

- NEUROLOGICAL**
- Loss of memory
 - Loss of consciousness
 - Behavioral changes
 - Loss of sensation
 - Extremity weakness
 - Difficulty speaking
 - Fainting
 - Urination
 - Defecation
 - Vomiting
 - Dizziness
 - Headaches

- SCALP**
- Petechiae
 - Bald spots (*from hair being pulled*)
 - Bump to the head (*from blunt force trauma or falling to the ground*)

- EYES & EYELIDS**
- Petechiae to eyeball
 - Petechiae to eyelid
 - Bloody red eyeball(s)
 - Vision changes
 - Droopy eyelid

- EARS**
- Ringing in ears
 - Petechiae on earlobe(s)
 - Bruising behind the ear
 - Bleeding in the ear

- FACE**
- Petechiae (*tiny red spots-slightly red or florid*)
 - Scratch marks
 - Facial drooping
 - Swelling

- MOUTH**
- Bruising
 - Swollen tongue
 - Swollen lips
 - Cuts/abrasions
 - Internal Petechiae

- CHEST**
- Chest pain
 - Redness
 - Scratch marks
 - Bruising
 - Abrasions

- NECK**
- Redness
 - Scratch marks
 - Finger nail impressions
 - Bruising (*thumb or fingers*)
 - Swelling
 - Ligature Marks

- VOICE & THROAT CHANGES**
- Raspy or hoarse voice
 - Unable to speak
 - Trouble swallowing
 - Painful to swallow
 - Clearing the throat
 - Coughing
 - Nausea
 - Drooling
 - Sore throat
 - Stridor

- BREATHING CHANGES**
- Difficulty breathing
 - Respiratory distress
 - Unable to breathe

Source: *Strangulation in Intimate Partner Violence, Chapter 16, Intimate Partner Violence. Oxford University Press, Inc. 2009.*

WHAT QUESTIONS SHOULD I ASK?

Describe and demonstrate how you were strangled. One hand? Two hands? Arm? Leg? Other object(s)?

How many times were you strangled?/Over what period of time?

Were you shaken while you were being strangled?

Was your head pounded on the ground or wall while you were being strangled?

Did your feet leave the ground while you were being strangled?

How long did the strangulation(s) last? (note that many victims may not know the answer to this)

On a scale of 0-10, how much pressure was applied to your neck during the strangulation(s)?

What did you think was going to happen?

What did the assailant say to you before, during, and after you were strangled?

What made the person stop strangling you?

Were you suffocated (defined as smothered)? (Suffocation refers to obstruction of the airway at the nose or mouth.)

Did you have any difficulty breathing or an inability to breathe?

Did you or do you currently have a cough?

WHAT QUESTIONS SHOULD I ASK? (2)

- ▶ Did you or do you currently have trouble swallowing?
- ▶ Did you have a hoarse, raspy, or complete loss of voice?
- ▶ Did you or do you currently have any changes in your vision? (seeing spots, tunnel vision, blurry vision, everything went black, etc.)
- ▶ Did you or do you currently have any changes in your hearing? (roaring, ringing, etc.)
- ▶ Did you become dizzy or lightheaded?
- ▶ Did you lose consciousness? (passed out, blacked out, etc.) *Many victims do not remember this!
- ▶ Did you experience any mental status changes? (restlessness, combativeness, amnesia, psychosis, etc.)
- ▶ Did you vomit as a result of being strangled?
- ▶ Did you lose control of urine or stool while you were being strangled?
- ▶ Were you sexually assaulted?
- ▶ Were you slapped, punched, kicked, or bitten anywhere on your body?
- ▶ Have you been strangled prior to this event? How many times?
- ▶ Did you or do you have a headache?
- ▶ Did you bite your tongue or the inside of your mouth?
- ▶ If pregnant, are you having any abdominal cramping, vaginal discharge, or bleeding?
- ▶ (Funk & Schuppel, 2003; Gwinn & Strack, 2013; Strack & McClane, 1999).

REMEMBER...

- ▶ Strangulation is not choking
- ▶ Strangulation is a high-risk lethality factor for homicide
- ▶ Strangulation as a factor is included in Ohio's bail factors (RC 2919.251)
- ▶ Concerns: mandated reporting of a felony under RC 2921.22??

Additional Resources

- ▶ [Training Institute on Strangulation Prevention \(strangulationtraininginstitute.com\)](http://strangulationtraininginstitute.com)
- ▶ [Brain Injury - Ohio Domestic Violence Network \(odvn.org\)](http://odvn.org)

Marsy's Law Decisions

Please attend the Ohio Crime Victim Justice Center sessions for more in-depth discussions of these and other key decisions regarding victim's rights.

Legislative enactments and pending legislation

Legislation and Rules

- ▶ Civ. R. 65.1(H): Dismissal of petitions for protection orders. Notwithstanding Civ. R. 41, any dismissal of a petition for DV, dating violence, stalking or sexually oriented offense CPOs by a court or party, other than a denial on the merits shall not operate as an adjudication of the merits or a bar to a subsequent filing of the petition
- ▶ Dating Violence: changed the term for 2 adults to individuals, suggesting that a minor could apply for a CPO when the R is over 18 RC 3113.31(A)(9)
- ▶ CSPO (2903.214(A)(3) Definition of FHM was changed to reflect it is a FHM of petitioner not having the same meaning as in RC 3113.31 "Family or household member" means any of the following:
 - ▶ (a) Any of the following who is residing with or has resided with the petitioner:
 - ▶ (i) A spouse, a person living as a spouse, or a former spouse of the petitioner;
 - ▶ (ii) A parent, a foster parent, or a child of the petitioner, or another person related by consanguinity or affinity to the petitioner;
 - ▶ (iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the petitioner, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the petitioner.

Fatality Review Boards (HB 254)

- ▶ Authorizes the establishment of county or regional domestic violence fatality review boards
- ▶ Requires each review board to submit to the ODH an annual report containing specified information related to DV fatalities reviewed by the board
- ▶ Requires ODH to adopt rules establishing a procedure for county or regional DV review boards to follow in conducting a review of a death by DV
 - ▶ ODH has a subcommittee who is looking at the rules.

Potential legislation

- ▶ Coercive Control
 - ▶ [Policy Brief](#) from Battered Women's Justice Project
- ▶ Kayden's Law
 - ▶ [Fact Sheet](#) from National Family Violence Law Center at GW
- ▶ Medical Payments for DV Survivors
- ▶ [Model Code](#)

Kayden's Law

- ▶ “(A) A law that ensures that, with respect to a child custody proceeding in which a parent has been alleged to have committed domestic violence or child abuse, including child sexual abuse—
 - ▶ “(i) expert evidence from a court-appointed or outside professional relating to the alleged abuse **may be admitted only if the professional possesses demonstrated expertise and clinical experience in working with victims of domestic violence or child abuse, including child sexual abuse**, that is not solely of a forensic nature; and
 - ▶ “(ii) in making a finding regarding any allegation of domestic violence or child abuse, including child sexual abuse, in addition to any other relevant admissible evidence, **evidence of past sexual or physical abuse committed by the accused parent shall be considered, including—**

Kayden's Law (2)

- ▶ “(I) any past or current protection or restraining orders against the accused parent;
 - ▶ “(II) sexual violence abuse protection orders against the accused parent;
 - ▶ “(III) arrests of the accused parent for domestic violence, sexual violence, or child abuse; or
 - ▶ “(IV) convictions of the accused parent for domestic violence, sexual violence, or child abuse.
- ▶ “(B) A law that ensures that, during a child custody proceeding—
 - ▶ “(i) a court may not, solely in order to improve a deficient relationship with the other parent of a child, remove the child from a parent or litigating party—
 - ▶ “(I) who is competent, protective, and not physically or sexually abusive; and
 - ▶ “(II) with whom the child is bonded or to whom the child is attached;

Kayden's Law (3)

- ▶ “(ii) a court may not, solely in order to improve a deficient relationship with the other parent of a child, restrict contact between the child and a parent or litigating party—
 - ▶ “(I) who is competent, **protective, and not physically or sexually abusive; and**
 - ▶ “(II) with whom the child is bonded or to whom the child is attached;
- ▶ “(iii) **a court may not order a reunification treatment, unless there is generally accepted and scientifically valid proof of the safety, effectiveness, and therapeutic value of the reunification treatment;**
- ▶ “(iv) **a court may not order a reunification treatment that is predicated on cutting off a child from a parent with whom the child is bonded or to whom the child is attached; and**

Kayden's Law (4)

- ▶ “(v) any order to remediate the resistance of a child to have contact with a violent or abusive parent primarily addresses the behavior of that parent or the contributions of that parent to the resistance of the child before ordering the other parent of the child to take steps to potentially improve the relationship of the child with the parent with whom the child resists contact.
- ▶ “(C) A law that requires judges and magistrates who hear child custody proceedings and other relevant court personnel involved in child custody proceedings, including guardians ad litem, best interest attorneys, counsel for children, custody evaluators, masters, and mediators to complete, with respect to the training program described in paragraph (5)—
 - ▶ “(i) not less than 20 hours of initial training; and
 - ▶ “(ii) not less than 15 hours of ongoing training every 5 years.
- ▶ “(4) UNIFORM REQUIRED STANDARDS.—The standards described in this paragraph are uniform required standards that—
 - ▶ “(A) apply to any neutral professional appointed by a court during a child custody proceeding to express an opinion relating to abuse, trauma, or the behaviors of victims and perpetrators of abuse and trauma; and
 - ▶ “(B) require that a professional described in subparagraph (A) possess demonstrated expertise and clinical experience in working with victims of domestic violence or child abuse, including child sexual abuse, that is not solely of a forensic nature.

Kayden's Law (5)

- ▶ “(5) TRAINING AND EDUCATION PROGRAM.—The training program described in this paragraph is an ongoing training and education program that—
 - ▶ “(A) focuses solely on domestic and sexual violence and child abuse, including—
 - ▶ “(i) child sexual abuse;
 - ▶ “(ii) physical abuse;
 - ▶ “(iii) emotional abuse;
 - ▶ “(iv) coercive control;
 - ▶ “(v) implicit and explicit bias, including biases relating to parents with disabilities;
 - ▶ “(vi) trauma;
 - ▶ “(vii) long- and short-term impacts of domestic violence and child abuse on children; and
 - ▶ “(viii) victim and perpetrator behavior patterns and relationship dynamics within the cycle of violence;

Kayden's Law (6)

- ▶ “(B) is provided by—
 - ▶ “(i) a professional with substantial experience in assisting survivors of domestic violence or child abuse, including a victim service provider (as defined in section 40002 of the Violence Against Women Act of 1994 ([34 U.S.C. 12291](#))); and
 - ▶ “(ii) if possible, a survivor of domestic violence or child physical or sexual abuse;
- ▶ “(C) relies on evidence-based and peer-reviewed research by recognized experts in the types of abuse described in subparagraph (A);
- ▶ “(D) does not include theories, concepts, or belief systems unsupported by the research described in subparagraph (C); and
- ▶ “(E) is designed to improve the ability of courts to—
 - ▶ “(i) recognize and respond to child physical abuse, child sexual abuse, domestic violence, and trauma in all family victims, particularly children; and
 - ▶ “(ii) make appropriate custody decisions that—
 - ▶ “(I) prioritize child safety and well-being; and
 - ▶ “(II) are culturally sensitive and appropriate for diverse communities.

Pending 2023-2024 State Legislation

- ▶ HB 281 Tort-damages and prior criminal conviction
- ▶ HB 14-equal parenting time and decision making
- ▶ HB 51-certain federal acts, laws, court orders, rules and regulations are infringements on the people's right to keep and bear arms and are invalid, not to be recognized, rejected and are not to be enforced in Ohio-includes 18 USC (g)(8-9); prohibits LE from having authority to enforce or attempt to enforce such and requires the courts and LE to protect the people's right to keep and bear arms.
- ▶ HB 111-to increase the sentencing range of third-degree felony domestic violence and to create a presumption in favor of a prison term for the offense
- ▶ HB 91/SB 100-prohibits person from knowingly installing a tracking device on another's property without consent. Penalty is Mis. 1
- ▶ HB 143-allows crime victims to terminate rental agreements and provides an income tax credit to LLs that have rented to someone who becomes a crime victim. Changes the definition of nuisance to clarify that calls to LE re: sexual violence, dating violence, rape, abuse or any sexually oriented offenses are not nuisance calls
- ▶ HB 486 -Aisha's Law has been reintroduced.
- ▶ SB 237- Anti-SLAPP bill

Pending Federal Legislation

- ▶ S.321-Strengthening Protections for Domestic Violence and Stalking Survivors Act of 2023
 - ▶ Prevent those convicted of certain stalking offenses from purchasing firearms;
 - ▶ Clarify that abusive dating partners subject to certain court orders are treated the same as an abusive spouse, closes the “boyfriend loophole”
- ▶ Safer Homes and Families Act - Comprehensive legislative package consisting of 4 bills:
 - ▶ Ban the use of electronic devices to track people without their consent;
 - ▶ Expand access to Social Security spousal benefits for individuals who divorce due to domestic abuse;
 - ▶ Train healthcare providers to better identify and treat individuals who have experienced sexual assault, domestic violence, or dating violence; and
 - ▶ Allow individuals who are experiencing dating violence, domestic violence, stalking, or sexual assault to break their lease without adverse costs.

So, any issues with the Forms?

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