



*Michael J. O'Neill*

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 329**

123rd General Assembly  
(As Introduced)

**Reps. Jones, Womer Benjamin, Allen, Padgett, DePiero, Sulzer, Williams, Jerse, Hartnett, Clancy, Britton, Distel, Bender, O'Brien, Patton, Vesper, Barrett, Flannery, Grendell, Sullivan**

---

### **BILL SUMMARY**

- Enhances the penalty for a person who is convicted of or pleads guilty to menacing by stalking.
- Requires the judge or magistrate, at the time bail is set, to determine whether a person accused of menacing by stalking will be prosecuted as a misdemeanor of the first degree or a felony of the fifth degree if the person previously has not been convicted of or pleaded guilty to committing that offense.
- Requires that the judge or magistrate fix the amount of bail for a person charged with menacing by stalking in all cases, regardless of whether the offense is a misdemeanor or a felony.
- Expands the persons who may file a motion for an anti-stalking protection order to include the alleged victim (who in some instances may not be the complainant) and a family or household member of the alleged victim and, if the order is issued, permits the order also to contain terms designed to ensure the safety and protection of the alleged victim in relation to the defendant.
- Expands the persons who may file a motion for a domestic violence temporary protection order to include the alleged victim (who in some instances may not be the complainant) and a family or household member of the alleged victim and, if the order is issued, permits the order also to contain terms designed to ensure the safety and protection of the alleged victim in relation to the defendant.

---

## CONTENT AND OPERATION

### Menacing by stalking

#### Enhanced penalty

Existing law. Existing law prohibits a person by engaging in a pattern of conduct from knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person. A person who violates this prohibition is guilty of menacing by stalking, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of the prohibition involving the same person who is the victim of the current offense, menacing by stalking is a felony of the fifth degree.

As used in the prohibition, "pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. "Mental distress" means any mental illness or condition that involves some temporary substantial incapacity or mental illness or condition that would normally require psychiatric treatment. (Sec. 2903.211.)

Operation of the bill. The bill enhances the penalty for the offense of menacing by stalking. Under the bill, menacing by stalking generally is either a misdemeanor of the first degree or a felony of the fifth degree, as determined by the court pursuant to the standards described in the following paragraph. If the offender previously has been convicted of or pleaded guilty to a misdemeanor violation of menacing by stalking, the violation is a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a felony violation of menacing by stalking, the violation is a felony of the fourth degree. (Sec. 2903.211(B).)

At the time the judge or magistrate sets bail for a person charged with menacing by stalking, the judge or magistrate must determine whether the person previously has been convicted of or pleaded guilty to committing that offense. If the judge or magistrate determines that the person previously has not been convicted of or pleaded guilty to committing that offense, the judge or magistrate must determine whether the violation will be prosecuted as a misdemeanor of the first degree or a felony of the fifth degree. The judge or magistrate then must enter the determinations in the record of the case, and the violation must be prosecuted in accordance with the determinations so entered.

In determining whether the violation will be prosecuted as a misdemeanor of the first degree or a felony of the fifth degree, the judge or magistrate must consider all of the following (sec. 2937.031):

- (1) The age of the alleged victim;
- (2) The age of the person charged with the offense;
- (3) The duration of the alleged pattern of conduct constituting the alleged offense;
- (4) The nature of the alleged conduct constituting the alleged offense;
- (5) Whether the person has a history of violence toward the alleged victim or a history of other violent acts;
- (6) Whether the person had a deadly weapon on or about the person's person or under the person's control while committing the offense.

### **Setting bail**

**Existing law.** Under existing law, in a case involving a felony, the judge or magistrate is required to fix the amount of bail.

In a case involving a misdemeanor or a violation of a municipal ordinance and not involving a felony, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate. If the judge, magistrate, or clerk of the court is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer having custody of the person charged may fix the amount of bail in accordance with a schedule previously fixed by the judge or magistrate and must take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail. (Sec. 2937.23(A).)

**Operation of the bill.** The bill requires that the judge or magistrate fix the amount of bail for a person charged with menacing by stalking in all cases, regardless of whether the offense is a misdemeanor or a felony (sec. 2937.23(A)(1)).

### **Anti-stalking protection orders**

#### **Overview**

Existing provisions regarding anti-stalking protection orders specify that the "complainant" in a case also may file a motion for an anti-stalking protection order

as a pretrial condition of release of the defendant in the case. If issued, the anti-stalking protection order must contain terms designed to ensure the safety and protection of the complainant in relation to the defendant.

The bill expands the number of persons who may file such a motion to include the alleged victim (who in some instances may not be the complainant) and a family or household member of the alleged victim. If issued, the anti-stalking protection order also must contain terms designed to ensure the safety and protection of the alleged victim in relation to the defendant. (Sec. 2903.213.)

### **Operation of the bill**

**Filing the motion for the order.** Under the bill, except when the complaint involves a person who is a family or household member, upon the filing of a complaint that alleges a violation of specified offenses, the complainant (existing law), the alleged victim (added by the bill), or a family or household member of an alleged victim (added by the bill) may file a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender, in addition to any bail that is set.<sup>1</sup> As under existing law, the motion must be filed with the clerk of the court that has jurisdiction of the case, may be filed at any time after the filing of the complaint, and must be prepared on a statutorily prescribed form that is provided by the clerk of the court. (Sec. 2903.213(A) and (B).)

**Hearing to determine whether to issue the order.** As soon as possible after the filing of a motion that requests the issuance of an anti-stalking protection order, but not later than the next day that the court is in session after the filing of the motion, the bill, as does existing law, requires the court to conduct a hearing to determine whether to issue the order. The person who requested the order must appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the court finds that the safety and protection of the complainant (existing law) or the alleged victim (added by the bill) may be impaired by the continued presence of the alleged offender, the court may issue the requested protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant (existing law) or

---

<sup>1</sup> *The specified offenses are felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass or a violation of a municipal ordinance substantially similar to assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass.*

*If the complaint involves a person who is a family or household member, the complainant, the alleged victim, or the family or household member may file a motion for a domestic violence temporary protection order.*

the alleged victim (added by the bill), including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant (existing law) or the alleged victim (added by the bill).

Under the bill and existing law, if the court issues an anti-stalking protection order that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or the alleged victim, the order must clearly state that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant (existing law), the alleged victim (added by the bill), or a family or household member (added by the bill) to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant (existing law), the alleged victim (added by the bill), or a family or household member (added by the bill). This requirement does not limit any discretion of a court to determine that an alleged offender charged with committing the offense of violating a protection order or a substantially equivalent municipal ordinance or with contempt of court (when the charge is based on an alleged violation of an anti-stalking protection order) did not commit the violation or was not in contempt of court. (Sec. 2903.213(C).)

**Ex parte orders.** Except when the complaint involves a person who is a family or household member, upon the filing of a complaint that alleges a violation of one of the specified offenses, the bill continues to allow the court, upon its own motion, to issue an anti-stalking protection order as a pretrial condition of release of the alleged offender if it finds that the safety and protection of the complainant (existing law) or the alleged victim (added by the bill) may be impaired by the continued presence of the alleged offender.

If the court issues an anti-stalking protection order as an ex parte order, it must under existing law unchanged by the bill conduct, as soon as possible after the issuance of the order but not later than the next day that the court is in session after its issuance, a hearing to determine whether the order should remain in effect, be modified, or be revoked. The hearing must be conducted under the standards set forth above describing the hearing to determine whether to issue the order. (Sec. 2903.213(D)(1) and (2).)

**Status of anti-stalking protection order.** The bill does not change the status of an anti-stalking protection order. An anti-stalking protection order that is issued as a pretrial condition of release (sec. 2903.213(E)):

(1) Is in addition to, but must not be construed as a part of, any bail set under Criminal Rule 46;

(2) Is effective only until the disposition, by the court that issued the order or, if the order is issued by a municipal court in specified circumstances, by the court of common pleas to which the alleged offender is bound over for prosecution, of the criminal proceeding arising out of the complaint upon which the order is based or until the issuance of a protection order arising out of the same activities as those that were the basis of the anti-stalking protection order;

(3) Must not be construed as a finding that the alleged offender committed the alleged offense and must not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

**To whom the anti-stalking protection order is issued.** If a court issues an anti-stalking protection order, the court must issue a copy of the order to the complainant (existing law), to the alleged victim (added by the bill), to the person who requested the order (added by the bill), to the defendant (existing law), and to all law enforcement agencies that have jurisdiction to enforce the order (existing law) (sec. 2903.213(G)(1)).

## **Domestic violence protection orders**

### **Overview**

Existing provisions regarding domestic violence temporary protection orders specify that the "complainant" in a case also may file a motion for a domestic violence protection order as a pretrial condition of release of the defendant in the case. If in an emergency the complainant is unable to file the motion, a person who made the arrest may file the motion on behalf of the victim. If issued, the domestic violence protection order must contain terms designed to ensure the safety and protection of the complainant in relation to the defendant.

The bill expands the number of persons who may file such a motion to include the alleged victim (who in some instances may not be the complainant) and a family or household member of the alleged victim. If issued, the domestic violence protection order must contain terms designed to ensure the safety and protection of the complainant, the alleged victim, or the family or household member in relation to the defendant. (Sec. 2919.26.)

### **Operation of the bill**

**Filing the motion for the order.** Under the bill, upon the filing of a complaint that alleges a violation of the offense of domestic violence or a substantially similar municipal ordinance or a violation of specified offenses, the complainant (existing law), the alleged victim (added by the bill), or a family or

household member of an alleged victim (added by the bill) may file a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail that is set.<sup>2</sup> If in an emergency the alleged victim is unable to file the motion, the bill continues to allow a person who made the arrest for the alleged violation to file the motion on behalf of the alleged victim. As under existing law, the motion must be filed with the clerk of the court that has jurisdiction of the case, may be filed at any time after the filing of the complaint, and must be prepared on a statutorily prescribed form that is provided by the clerk of the court. At all proceedings on a motion for a temporary protection order, the bill continues to allow a victim to be accompanied by a victim advocate or another person to provide support to the victim. (Sec. 2919.26(A) and (B).)

**Hearing to determine whether to issue the order.** As soon as possible after the filing of a motion that requests the issuance of a temporary protection order, but not later than 24 hours after the filing of the motion, the court under existing law not changed by the bill must conduct a hearing to determine whether to issue the order. The person who requested the order continues to be required to appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the person who requested the order is unable to appear and if the court finds that the failure to appear is because of the person's hospitalization or medical condition resulting from the offense alleged in the complaint, another person who is able to provide the court with the information it requests may appear in lieu of the person who requested the order. If the court finds that the safety and protection of the complainant (existing law), alleged victim (added by the bill), or any other family or household member of the alleged offender (existing law) may be impaired by the continued presence of the alleged offender, the court may issue a temporary protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant (existing law), alleged victim (added by the bill), or the family or household member (existing law), including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant (existing law), alleged victim (added by the bill), or the family or household member (existing law).

---

<sup>2</sup> *The specified offenses are felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass that involves a person who was a family or household member at the time of the violation, or a violation of a municipal ordinance substantially similar to assault, menacing by stalking, or aggravated trespass that involves a person who was a family or household member at the time of the violation.*

If the court issues a temporary protection order that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant (existing law), alleged victim (added by the bill), or the family or household member (existing law), the order must state clearly that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant (existing law), alleged victim (added by the bill), or family or household member (existing law) to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant (existing law), alleged victim (added by the bill), or family or household member (existing law). This requirement does not limit any discretion of a court to determine that an alleged offender charged with committing the offense of violating a protection order or a substantially equivalent municipal ordinance or with contempt of court (when the charge is based on an alleged violation of a domestic violence temporary protection order) did not commit the violation or was not in contempt of court. (Sec. 2919.26(C).)

**Ex parte orders.** Upon the filing of a complaint that alleges a violation of one of the above-described offenses, the court, upon its own motion, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant (existing law), alleged victim (added by the bill), or other family or household member of the alleged offender (existing law) may be impaired by the continued presence of the alleged offender.

If the court issues a domestic violence temporary protection order as an ex parte order, it must, under the bill and under existing law, conduct a hearing in the presence of the alleged offender to determine whether the order should remain in effect, be modified, or be revoked. The hearing must be conducted as soon as possible after the issuance of the order and not later than the next day on which the court is scheduled to conduct business after the day on which the alleged offender was arrested or at the time of the appearance of the alleged offender pursuant to summons. The hearing must be conducted under the standards set forth above for the hearing to determine whether to issue the order. An ex parte order must contain only those terms authorized in "**Hearing to determine whether to issue the order.**" The bill does not modify these hearing requirements. (Sec. 2919.26(D)(1), (2), and (3).)

**Status of anti-stalking protection order.** The bill does not change the status of a domestic violence temporary protection order. A domestic violence temporary protection order that is issued as a pretrial condition of release (sec. 2919.26(E)):

(1) Is in addition to, but must not be construed as a part of, any bail set under Criminal Rule 46;

(2) Is effective only until the occurrence of either of the following:

(a) The disposition, by the court that issued the order or, if the order was issued by a municipal court in specified circumstances, by the court of common pleas to which the alleged offender is bound over for prosecution, of the criminal proceeding arising out of the complaint upon which the order is based;

(b) The issuance of a protection order or the approval of a consent agreement, arising out of the same activities as those that were the basis of the complaint upon which the order is based;

(3) Must not be construed as a finding that the alleged offender committed the alleged offense, and must not be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

**To whom the anti-stalking protection order is issued.** If a court issues a domestic violence temporary protection order, the court must issue a copy of the order to the complainant (existing law), to the alleged victim (added by the bill), to the person who requested the order (added by the bill), to the defendant (existing law), and to all law enforcement agencies that have jurisdiction to enforce the order (existing law).

All law enforcement agencies must establish and maintain an index for the domestic violence temporary protection orders delivered to the agencies. A complainant (existing law), alleged victim (added by the bill), or other person (added by the bill) who obtains a domestic violence temporary protection order may provide notice of the issuance of the order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering the order in the other county and filing a copy of the registered protection order with a law enforcement agency in the other county. (Sec. 2919.26(G).)

**Reciprocal terms.** If a complaint is filed that alleges that a person committed one of the specified types of violations, the court may not issue a domestic violence temporary protection order that requires the complainant (existing law), alleged victim (added by the bill), or another family or household member of the defendant (existing law) to do or refrain from doing an act that the court may require the defendant to do or refrain from doing under a temporary protection order unless all of the following apply (sec. 2919.26(I)):

(1) The defendant has filed a separate complaint that alleges that the complainant (existing law), alleged victim (added by the bill), or other family or household member (existing law) in question who would be required under the order to do or refrain from doing the act committed one of the specified types of violations that would have permitted the imposition of a domestic violence temporary restraining order.

(2) The court determines that both the complainant (existing law), alleged victim (added by the bill), or other family or household member (existing law) in question who would be required under the order to do or refrain from doing the act and the defendant acted primarily as aggressors.

(3) The court determines that neither the complainant (existing law), alleged victim (added by the bill), or other family or household member (existing law) in question who would be required under the order to do or refrain from doing the act nor the defendant acted primarily in self-defense.

(4) The court determines that, in accordance with the standards and criteria for the imposition of the domestic violence temporary protection order as applied in relation to the separate complaint filed by the defendant, it should issue the order to require the complainant (existing law), alleged victim (added by the bill), or other family or household member (existing law) in question to do or refrain from doing the act.

---

## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	05-05-99	p. 557

H0329-I.123/rss