Michael J. O'Neill *Legislative Service Commission*

Sub. H.B. 412

123rd General Assembly
(As Reported by H. Criminal Justice)

Reps. Salerno, Ford, Goodman, D. Miller, O'Brien, Patton, Schuring, Sullivan, Thomas, Tiberi, Womer Benjamin, Willamowski

BILL SUMMARY

- Increases the penalties for the offenses of assault, aggravated menacing, menacing by stalking, and menacing when the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of statutorily described official responsibilities or duties.

- Requires officers and employees of a public children services agency, private child placing agency, juvenile court, or law enforcement agency to consider to be confidential information the residential addresses of each officer or employee of a public children services agency or a private child placing agency who performs official responsibilities or duties as well as the residential address of persons related to that officer or employee by consanguinity or affinity.

- Authorizes the officer or employee to waive that confidentiality.

- Prohibits officers and employees of a public children services agency, private child placing agency, juvenile court, or law enforcement agency from disclosing those addresses to any person with the knowledge that the person is or may be a subject of an investigation, interview, examination, criminal case, other case, or other matter with which the officer or employee of the public children services agency or private child placing agency currently is or has been associated.

- To the extent that those residential addresses are contained in public records kept by a public children services agency, private child placing agency, juvenile court, or law enforcement agency, requires the residential

addresses to not be considered to be information subject to inspection or copying as part of a public record under the Public Records Law.

- Requires a public children services agency, private child placing agency, juvenile court, or law enforcement agency to disclose to a journalist in specified circumstances a residential address that is confidential information under the bill.

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CONTENT AND OPERATION

Assault

Existing law

Existing law prohibits a person from knowingly causing or attempting to cause physical harm to another or to another's unborn. Existing law also prohibits

a person from recklessly causing serious physical harm to another or to another's unborn. (Sec. 2903.13(A) and (B).)

A person who violates either prohibition is guilty of assault. Generally, assault is a misdemeanor of the first degree, but, in the following circumstances, assault is as follows (sec. 2903.13(C)):

(1) If the victim of the offense is a peace officer, a firefighter, or a person performing emergency medical service, while in the performance of their official duties, assault is a felony of the fourth degree. If the victim is a peace officer and if the victim suffered serious physical harm as a result of the commission of the offense, assault is a felony of the fourth degree, and the court must impose as a mandatory prison term one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration.[1]

(2) If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, assault is a felony of the fourth degree. If the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, if the offender previously has been convicted of or pleaded guilty to committing assault, felonious assault, or failing to provide for a functionally impaired person, and if in relation to the previous conviction the offender was a caretaker and the victim was a functionally impaired person under the offender's care, assault is a felony of the third degree.

(3) If the offense is committed in any of the following circumstances, assault is a felony of the fifth degree:

(a) The offense occurs in or on the grounds of a state correctional institution or an institution of the Department of Youth Services (DYS), the victim of the offense is an employee of the Department of Rehabilitation and Correction (DRC), DYS, or a probation department or is on the premises of the particular institution for business purposes or as a visitor, and the offense is committed by a person incarcerated in the state correctional institution, by a person institutionalized in a DYS institution pursuant to a commitment to DYS, by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

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[1] *The prison terms prescribed for a felony of the fourth degree are terms of 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 months.*

(b) The offense occurs in or on the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility or a probation department or is on the premises of the facility for business purposes or as a visitor, and the offense is committed by a person who is under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person's being charged with or convicted of any crime, or subsequent to the person's being alleged to be or adjudicated a delinquent child.

(c) The offense occurs off the grounds of a state correctional institution, the grounds of a DYS institution, or the grounds of a local correctional facility, the victim of the offense is an employee of the local correctional facility, DRC, DYS, or a probation department, the offense occurs during the employee's official work hours and while the employee is engaged in official work responsibilities, and the offense is committed by a person who is incarcerated in a state institution, institutionalized in DYS, or under custody in the facility subsequent to the person's arrest for any crime or delinquent act, subsequent to the person being charged with or convicted of any crime, or subsequent to the person being alleged to be or adjudicated a delinquent child and who temporarily is outside of the institution or facility for any purpose or by a probationer or parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency.

(d) The victim of the offense is a school teacher or administrator or a school bus operator, and the offense occurs in a school, on school premises, in a school building, on a school bus, or while the victim is outside of school premises or a school bus and is engaged in duties or official responsibilities associated with the victim's employment or position as a school teacher or administrator or a school bus operator, including, but not limited to, driving, accompanying, or chaperoning students at or on class or field trips, athletic events, or other school extracurricular activities or functions outside of school premises.

Operation of the bill

Under the bill, assault is a felony of the fifth degree if the victim of the offense is an officer or employee of a "public children services agency" or a "private child placing agency" (see "***Definitions***," below) and the offense relates to the officer's or employee's performance or anticipated performance of statutorily described official responsibilities or duties (see "***Specified official responsibilities or duties***," below). Assault is a felony of the fourth degree if those conditions exist and if the offender also previously has been convicted of or pleaded guilty to assault involving an officer or employee of a public children services agency or private child placing agency. (Sec. 2903.13(C)(5).)

Aggravated menacing

Existing law

Existing law prohibits a person from knowingly causing another to believe that the offender will cause serious physical harm to another person or to the other person's property, unborn, or immediate family. A person who violates this prohibition is guilty of aggravated menacing, a misdemeanor of the first degree. (Sec. 2903.21.)

Operation of the bill

Under the bill, aggravated menacing is a felony of the fifth degree if the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of statutorily described official responsibilities or duties (see "***Specified official responsibilities or duties***," below). Aggravated menacing is a felony of the fourth degree if those conditions exist and if the offender also previously has been convicted of or pleaded guilty to aggravated menacing involving an officer or employee of a public children services agency or private child placing agency. (Sec. 2903.21(B).)

Menacing by stalking

Existing law

Existing law prohibits a person by engaging in a "pattern of conduct" (see "***Definitions***," below) from knowingly causing another to believe that the offender will cause physical harm to the other person or cause "mental distress" (see "***Definitions***," below) to the other person. A person who violates this prohibition is guilty of menacing by stalking. Menacing by stalking generally is a misdemeanor of the first degree, but it is a felony of the fourth degree if any of the following applies (sec. 2903.211(B)):

(1) The offender previously has been convicted of menacing by stalking or of aggravated trespass.

(2) In committing the offense, the offender made a threat of physical harm to or against the victim.

(3) In committing the offense, the offender trespassed on the land or premises where the victim lives, is employed, or attends school.

(4) The victim of the offense is a minor.

(5) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(6) While committing the offense, the offender had a deadly weapon on or about the offender's person or under the offender's control.

(7) At the time of the commission of the offense, the offender was the subject of an anti-stalking temporary protection order or anti-stalking civil protection order, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(8) In committing the offense, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises.

(9) The offender previously had been found to be a mentally ill person subject to hospitalization by court order, or the offender previously had been voluntarily admitted to hospitalization and, as the basis for or subsequent to that voluntary admission, the offender was determined to represent a risk to self or others.

Operation of the bill

Under the bill, if the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of statutorily described official responsibilities or duties (see "***Specified official responsibilities or duties***," below). Menacing by stalking is a felony of the fifth degree or, if the offender also previously has been convicted of or pleaded guilty to menacing by stalking involving an officer or employee of a public children services agency or private child placing agency, a felony of the fourth degree. (Sec. 2903.211(B).)

Menacing

Existing law

Existing law prohibits a person from knowingly causing another to believe that the offender will cause physical harm to the person or the person's property, unborn, or immediate family. A person who violates this prohibition is guilty of menacing, a misdemeanor of the fourth degree. (Sec. 2903.22.)

Operation of the bill

Under the bill, if the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of statutorily described official responsibilities or duties (see "***Specified official responsibilities or duties***," below). Menacing is a misdemeanor of the first degree, or if the offender also previously has been convicted of or pleaded guilty to menacing involving an officer or employee of a public children services agency or private child placing agency, a felony of the fourth degree. (Sec. 2903.22(B).)

Residential addresses of public children services agency or a private child placing agency personnel

Existing Public Records Law

Right to public records. Existing law provides that all "public records" (see "***Definitions***," below) must be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a person responsible for public records must make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, governmental units must maintain public records in a manner that they can be made available for inspection. The Personal Information Systems Laws do not limit the provisions of the Public Records Law. (Sec. 149.43(B) and (D).)

Mandamus action to enforce Public Records Law. If a person allegedly is aggrieved by the failure of a governmental unit to promptly prepare a public record and to make it available to the person for inspection, or if a person who has requested a copy of a public record allegedly is aggrieved by the failure of a person responsible for the public record to make a copy available to the allegedly aggrieved person, the allegedly aggrieved person may commence a mandamus action to obtain a judgment that orders the governmental unit or the person responsible for the public record to comply with the Public Records Law and that awards reasonable attorney's fees to the allegedly aggrieved person. The mandamus action may be commenced in the court of common pleas of the county in which the Public Records Law allegedly was violated, in the Ohio Supreme Court, or in the Court of Appeals for the appellate district in which the Public Records Law allegedly was violated. (Sec. 149.43(C).)

BMV and bulk commercial special extraction requests. The Bureau of Motor Vehicles may adopt rules under the Administrative Procedure Act to reasonably limit the number of bulk commercial special extraction requests made by a person for the same records or for updated records during a calendar year.

The rules may include provisions for charges to be made for bulk commercial special extraction requests for the actual cost of the Bureau, plus special extraction costs, plus 10%. The Bureau may charge for expenses for redacting information the release of which is prohibited by law. This provision does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research. (Sec. 149.43(E).)

Operation of the bill

Confidentiality of residential addresses. Both of the following apply to the residential address of each officer or employee of a public children services agency or a private child placing agency who performs statutorily described official responsibilities or duties (see "***Specified official responsibilities or duties***," below) and to the residential address of persons related to that officer or employee by consanguinity or affinity (sec. 2151.142(B)):

(1) Other officers and employees of a public children services agency, private child placing agency, juvenile court, or law enforcement agency must consider those residential addresses to be confidential information. The officer or employee of the public children services agency or private child placing agency may waive the confidentiality of those residential addresses by giving express permission for their disclosure to other officers or employees of a public children services agency, private child placing agency, juvenile court, or law enforcement agency.

(2) To the extent that those residential addresses are contained in public records kept by a public children services agency, private child placing agency, juvenile court, or law enforcement agency, they must not be considered to be information that is subject to inspection or copying as part of a public record under the Public Records Law.

Except as provided in the following paragraph, in the absence of a waiver described in paragraph (1), above, the bill prohibits an officer or employee of a public children services agency, private child placing agency, juvenile court, or law enforcement agency from disclosing the residential address of an officer or employee of a public children services agency or private child placing agency, or the residential address of a person related to that officer or employee by consanguinity or affinity, that is confidential information under paragraph (1) to any person when the disclosing officer or employee knows that the person is or may be a subject of an investigation, interview, examination, criminal case, other case, or other matter with which the officer or employee to whom the residential address relates currently is or has been associated.

If, on or after the effective date of the bill, a journalist requests a public children services agency, private child placing agency, juvenile court, or law enforcement agency to disclose a residential address that is confidential information under paragraph (1), above, the agency or juvenile court must disclose to the journalist the residential address if all of the following apply: (1) the request is in writing, is signed by the journalist, and includes the journalist's name and title and the name and address of the journalist's employer, (2) the request states that disclosure of the residential address would be in the public interest, (3) the request adequately identifies the person whose residential address is requested, (4) the public children services agency, private child placing agency, juvenile court, or law enforcement agency receiving the request is either (a) the agency or juvenile court with which the official in question serves or with which the employee in question is employed or (b) the agency or juvenile court that has custody of the records of the agency with which the official in question serves or with which the employee in question is employed. (Sec. 2151.412(C) and (D).)

Conforming change regarding residential addresses of public children services agency or a private child placing agency personnel

Existing law

If a complaint filed with respect to a child alleges that a child is an abused, neglected, or dependent child, a specified individual or entity that is investigating whether the child is an abused, neglected, or dependent child, has custody of the child, is preparing a social history for the child, or is providing any services for the child may request specified entities, including a public children services agency and a private child placing agency that has any records related to the child to provide the individual or entity with a copy of the records. Upon receiving the request, the individual or entity must comply with the request, unless specific circumstances apply.

Existing law specifies that this records production requirement must not be construed to require, authorize, or permit, and does not require, authorize, or permit, the dissemination of any records or any information contained in any records if the dissemination of the records or information generally is prohibited by any provision of the Revised Code and a specific provision of the Revised Code does not specifically authorize or permit the dissemination of the records or information pursuant to this section. (Sec. 2151.141.)

Operation of the bill

Under the bill, this records production requirement does not require, authorize, or permit the dissemination of any records or any information contained in any records if the dissemination of the records or information generally is

prohibited by the bill's provisions or another section of the Revised Code and a waiver as described above under paragraph (1) of "***Confidentiality of residential addresses***" or a specific provision of the Revised Code does not specifically authorize or permit the dissemination of the records or information pursuant to this provision. (Sec. 2151.141(D).)

Specified official responsibilities or duties

The official responsibilities or duties to which the bill applies include, but are not limited to, the following duties that an officer or employee of a public children services agency or a private child placing agency performs:

(1) Duties regarding the disposition of abused, neglected, and dependent children (secs. 2151.353, 2151.413, 2151.414, and 2151.415--not in the bill);

(2) Duties regarding children placed in the temporary custody of the agency (sec. 2151.33--not in the bill);

(3) Duties regarding case plans for children to whom the agency is providing services (secs. 2151.412 and 2151.416--not in the bill);

(4) Duties regarding court review of specified dispositional orders (sec. 2151.417--not in the bill);

(5) Duties regarding reports of injury, abuse, or neglect of a child under 18 years of age or a mentally retarded, developmentally disabled, or physically impaired child under 21 years of age (sec. 2151.421--not in the bill);

(6) Duties regarding the production of specified records relating to unruly and delinquent children and juvenile traffic offenders (sec. 2151.141 and sec. 2151.14--not in the bill).

Definitions

"Journalist" means a person engaged in, connected with, or employed by any news medium, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar medium, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information to the general public (sec. 149.43(B)(5)--not in the bill).

"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(C)(2)).

"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 (sec. 2903.211(C)(1)).

"Private child placing agency" means any association that is certified to accept temporary, permanent, or legal custody of children and place the children for either foster care or adoption (sec. 2151.011(A)(3)--not in the bill).

"Public children services agency" means a county children services board, a county department of human services, or a designated private or government entity that has assumed the powers and duties of the children services function prescribed by the County Children's Services Law for a county (secs. 5153.01(A) and 5153.02--not in the bill).

"Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following: (1) medical records, (2) records pertaining to probation and parole proceedings, (3) records pertaining to certain actions and appeals relating to abortions performed on minors, (4) records pertaining to adoption proceedings and certain other adoption records, (5) information in a record contained in the putative father registry, regardless of whether the information is held by the Department of Human Services (DHS), the division of child support in DHS, or a child support enforcement agency, (6) trial preparation records, (7) confidential law enforcement investigatory records, (8) records containing information that is confidential under the Medication Communications Law or under the Civil Rights Law, (9) DNA records stored in the DNA database, (10) specified inmate records released by the DRC to DYS or a court of record, (11) specified records maintained by DYS pertaining to children in its custody released by DYS to DRC, (12) intellectual property records, (13) donor profile records, (14) records maintained by DHS pursuant to the Child Support Law, (15) peace officer residential and familial information, (16) in the case of a county hospital, information that constitutes a trade secret, or (17) records the release of which is prohibited by state or federal law. (Sec. 149.43(A)(1)--not in the bill.)

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	07-22-99	pp.	1176-1177
Reported, H. Criminal Justice	01-26-00	pp.	1573-1574

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