



H.B. 763*

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

**Reps. Salerno, Trakas, Bender, Winkler, Perry, Patton, Allen, Mettler,
Hughes, Taylor**

BILL SUMMARY

- Modifies the offense of "criminal child enticement" by expanding the places into which a person is prohibited from knowingly soliciting, coaxing, enticing, or luring any child under 14 to enter to also include any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, other structure, shelter, restroom facility, or portion of any of the specified places or objects.
- Increases the penalty for the offense of "criminal child enticement" to a felony of the fifth degree for a first offense and a felony of the fourth degree if the offender previously has been convicted of criminal child enticement, rape, sexual battery, or the former offense of felonious sexual penetration or of kidnapping or gross sexual imposition when the victim of that prior offense was under the age of 17 at the time of the offense.
- Expands the list of prior offenses that enhance the penalty for domestic violence to also include the offense of rape involving a family or household member.
- Expands the list of offenses for which the complainant, the alleged victim, or a family or household member of the alleged victim may file a motion requesting the issuance of a domestic violence temporary protection order as a pretrial condition of release of the alleged offender to also include the offense of rape involving a family or household member.

* *This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

- Includes rape involving a family or household member within the list of domestic violence and family-related offenses for which the court must consider certain specified factors before setting bail for the alleged offender if the offender was subject to a domestic violence protection order or consent agreement at the time of committing the offense or previously has been convicted of violating a domestic violence protection order or consent agreement or of any one of the listed domestic violence and family-related offenses.

CONTENT AND OPERATION

Introduction

The bill modifies the scope of and penalties for the offense of criminal child enticement. It also adds the offense of rape involving a person who was a family or household member to all of the following: (1) the list of prior offenses that enhance the penalty for domestic violence, (2) the list of offenses for which a person may file a motion for a domestic violence temporary protection order, and (3) the list of domestic violence and family-related offenses for which the court must consider specific factors before setting bail if the alleged offender was subject to a domestic violence protection order or consent agreement or has a prior conviction of any of the listed offenses.

Criminal child enticement

Existing law

R.C. 2905.05(A) prohibits a person from knowingly soliciting, coaxing, enticing, or luring, by any means and without privilege to do so, any child under the age of 14 into any "vehicle" whether or not the offender knows the age of the child, if both of the following apply:

(1) The actor does not have the express or implied consent of the child's parent, guardian, or legal custodian in undertaking the activity.

(2) The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services and is not an employee, agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but, at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

Whoever violates the above prohibition is guilty of "criminal child enticement," which is generally a misdemeanor of the first degree. The offense is

a felony of the fifth degree if the offender previously has been convicted of criminal child enticement, rape, sexual battery, or the former offense of felonious sexual penetration, or of kidnapping or gross sexual imposition when the victim of that prior offense was under the age of 17 at the time of the offense. (R.C. 2905.05(C).)

It is an affirmative defense to the charge of criminal child enticement that the person undertook the activity in response to a bona fide emergency situation or under the reasonable belief that it was necessary to preserve the health, safety, or welfare of the child (R.C. 2905.05(B)).

"Vehicle" has the same meaning as R.C. 4501.01. R.C. 4501.01(A) defines "vehicles" as everything on wheels or runners, including motorized bicycles, but does not mean vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions (R.C. 2905.05(A) referencing R.C. 4501.01(A)--not in the bill).

Operation of the bill

The bill expands the places into which a person is prohibited from soliciting, coaxing, enticing, or luring a child under 14 to enter to also include any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, other structure, shelter, restroom facility, or portion of any of the specified places or objects. The bill also expands the scope of the existing prohibition to also apply to any portion of a vehicle. (R.C. 2905.05(A).)

The bill increases the penalties for "criminal child enticement" by one degree. Under the bill, "criminal child enticement" generally is a felony of the fifth degree. If the offender previously has been convicted of criminal child enticement, rape, sexual battery, or the former offense of felonious sexual penetration, or of kidnapping or gross sexual imposition when the victim of that prior offense was under the age of 17 at the time of the offense, "criminal child enticement" is a felony of the fourth degree. (R.C. 2905.05(C).)

Domestic violence

Existing law

R.C. 2919.25 includes three prohibitions regarding violence against a "family or household member" (see Definitions," below). First, it prohibits a person from knowingly causing or attempting to cause physical harm to a family or household member. Second, it prohibits a person from recklessly causing

serious physical harm to a family or household member. Third, it prohibits a person, by threat of force, from knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member. (R.C. 2919.25(A), (B), and (C).)

Whoever violates any of these prohibitions is guilty of "domestic violence." Generally a violation of the third prohibition above is a misdemeanor of the fourth degree, and a violation of the first or second prohibition above is a misdemeanor of the first degree. If the offender previously has been convicted of domestic violence, of a violation of a municipal ordinance that is substantially similar to domestic violence, of felonious assault, aggravated assault, assault, negligent assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, or endangering children involving a person who was a family or household member at the time of the violation, or of a violation of a municipal ordinance that is substantially similar to one of those offenses involving a person who was a family or household member at the time of the offense, a violation of the first or second prohibition above is a felony of the fifth degree, and a violation of the third prohibition is a misdemeanor of the third degree. (R.C. 2919.25(D).)

Operation of the bill

The bill expands the list of prior offenses that enhance the penalty for domestic violence to also include the offense of rape involving a person who was a family or household member at the time of the offense or a violation of a municipal ordinance that is substantially similar to rape involving a person who was a family or household member at the time of the offense. Therefore, a person who commits domestic violence and who previously has been convicted of rape involving a family or household member is guilty of a felony of the fifth degree for a violation of the first or second prohibition above or a misdemeanor of the third degree for a violation of the third prohibition above. (R.C. 2919.25(D).)

Domestic violence protection orders

Operation of the bill

The bill expands the list of offenses for which a complainant, an alleged victim, or a family or household member of an alleged victim may file a motion requesting the issuance of a temporary protection order as a pretrial condition of release of the alleged offender to also include the offense of rape involving a person who was a family or household member at the time of the offense (R.C. 2919.26(A)(1)).

Existing law

When a motion for the protection order may be made. Under existing law, upon the filing of a complaint that alleges the commission of domestic violence, a violation of a municipal ordinance substantially similar to domestic violence, the commission of 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 that is 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, the complainant, the alleged victim, or a family or household member of an alleged victim may file a statutorily prescribed 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 set. The motion must be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint. If in an emergency the alleged victim is unable to file the motion, a person who made an arrest for the alleged violation may file the petition on behalf of the alleged victim. (R.C. 2919.26(A).)

Procedure. 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 must 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 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, alleged victim, or any other family or household member of the alleged offender 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, alleged victim, or the family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant, alleged victim, or the family or household member. The court, upon its own motion in a case involving one of the above-listed offenses, may issue a temporary protection order as a pretrial condition of release if it finds that the safety and protection of the complainant, alleged victim, or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender. (R.C. 2919.26(C) and (D)(1).)

If the court issues a temporary protection order as an ex parte order, it must conduct, as soon as possible after the issuance of the order, a hearing in the presence of the alleged offender 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 to determine whether the order should remain in effect, be modified, or be revoked. (R.C. 2919.26(D)(2).)

Copy of temporary protection order issued by court. A copy of any temporary protection order that is issued must be issued by the court to the complainant, to the alleged victim, to the person who requested the order, to the defendant, and to all law enforcement agencies that have jurisdiction to enforce the order. The court must direct that a copy of the order be delivered to the defendant on the same day that the order is entered. All law enforcement agencies must establish and maintain an index for the temporary protection orders delivered to the agencies. With respect to each order delivered, each agency must note on the index, the date and time of the receipt of the order by the agency. Any officer of a law enforcement agency must enforce a temporary protection order issued by any court in this state in accordance with the provisions of the order, including removing the defendant from the premises, regardless of whether the order is registered in the county in which the officer's agency has jurisdiction. (R.C. 2919.26(G).)

Effect of temporary protection order. A temporary protection order that is issued as a pretrial condition of release as described above has the following effects (R.C. 2919.26(E)):

(1) It is in addition to, but must not be construed as a part of, any bail set.

(2) It is effective only until the occurrence of either of the following: (a) the disposition, by the court that issued the order or 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 (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) It 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.

Violation of a temporary protection order. Upon a violation of a temporary protection order, the court may issue another temporary protection

order, as a pretrial condition of release, that modifies the terms of the order that was violated (see **COMMENT**) (R.C. 2919.26(H)).

Factors to be considered before setting bail for offenders charged with certain domestic violence and family related offenses

Existing law

If a person is charged with domestic violence or a violation of a municipal ordinance that is substantially similar to domestic violence, with felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass involving a person who was a family or household member at the time of the violation, or with 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 and if the person, at the time of the alleged violation, was subject to the terms of a domestic violence protection order or consent agreement or previously was convicted of or pleaded guilty to domestic violence, violating a domestic violence protection order or consent agreement, a violation of a municipal ordinance substantially similar to domestic violence or violating a domestic violence protection order or consent agreement, felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass involving 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, the court must consider all of the following, in addition to any other circumstances considered by the court before setting bail for the person (R.C. 2919.251(A)):

- (1) Whether the person has a history of domestic violence or a history of other violent acts;
- (2) The mental health of the person;
- (3) Whether the person has a history of violating the orders of any court or governmental entity;
- (4) Whether the person is potentially a threat to any other person;
- (5) Whether setting bail at a high level will interfere with any treatment or counseling that the person or the family of the person is undergoing.

Operation of the bill

The bill expands the list of previous convictions that trigger the consideration of the factors listed above under "**Existing law**" before setting bail to

include rape involving a person who was a family or household member at the time of the commission of the offense. Therefore, if a person is charged with rape involving a person who was a family or household member at the time of the commission of the offense and if at the time of the alleged offense the person is subject to the terms of a domestic violence protection order or consent agreement or previously has been convicted of or pleaded guilty to domestic violence, violating a domestic violence protection order or consent agreement, a similar municipal ordinance violation, felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass involving a family or household member, or a municipal ordinance substantially similar to assault, menacing by stalking, or aggravated trespass involving a family or household member, including rape, the court must consider the factors listed above under 'Existing law' before setting bail. (R.C. 2919.251(B).)

Definitions

As used in the domestic violence-related provisions of the bill:

"Family or household member" means any of the following (R.C. 2919.25(E)(1)):

(1) Any of the following who is residing or has resided with the offender: (a) a spouse, a person living as a spouse, or a former spouse of the offender, (b) a parent or a child of the offender, or another person related by consanguinity or affinity to the offender, or (c) a parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

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

"Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question (R.C. 2929.25(E)(2)).

COMMENT

R.C. 2919.27 prohibits a person from recklessly violating the terms of the temporary protection order. A person who violates the prohibition is guilty of violating a protection order and generally is guilty of a misdemeanor of the first degree. But if the offender previously has been convicted of or pleaded guilty to

two or more violations of the menacing by stalking or aggravated trespass that involved the same person who is the subject of the protection order or previously has been convicted of or pleaded guilty to committing the offense of violating a protection order one or more times, violating a protection order is a felony of the fifth degree.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-29-00	p. 2212
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