



S.B. 34

123rd General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Defines "residing with or has resided with" for purposes of the domestic violence laws to mean the act of living together or having lived together in the same household, dwelling place, or residence.
- Clarifies that, as used in the domestic violence laws, a "family or household member" must be residing with or must have resided with the offender in order for the domestic violence statutes to apply.

CONTENT AND OPERATION

Existing law

Criminal prohibition against domestic violence

Prohibition. Existing Revised Code section 2919.25 prohibits any person from doing any of the following: (1) knowingly causing or attempting to cause physical harm to a family or household member, (2) recklessly causing serious physical harm to a family or household member, or (3) by threat of force, knowingly cause a family or household member to believe that the person will cause imminent physical harm to the family or household member. (Sec. 2919.25(A), (B), and (C).)

A violation of the prohibition is the offense of domestic violence. Except as otherwise provided below, a violation of the third prohibition above is a misdemeanor of the fourth degree, and a violation of the first or second prohibitions above is a misdemeanor of the first degree. A violation of the first or second prohibition above is a felony of the fifth degree, and a violation of the third prohibition above is a misdemeanor of the third degree if all of the following apply: (1) the offender previously has been convicted of domestic violence or a substantially similar municipal offense or of felonious assault, aggravated assault,

assault, negligent assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, or endangering children or a substantially similar municipal offense, and (2) the victim involved in the previous conviction was a person who was a family or household member at the time of the violation. (Sec. 2919.25(D).)

Definitions. As used in the criminal domestic violence statute, "family or household member" means either of the following (sec. 2919.25(E)(1)):¹

(1) Any of the following who is residing or has resided with the offender:²

(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;

(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.³

Existing law also defines "person living as a spouse" to mean 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. The statute does not define "cohabit," although numerous courts have taken a stab at it. (Sec. 2919.25(E)(2).)

¹ R.C. 2919.25, 2919.251, and 2919.26.

² *Recently, in State v. Williams, (1997), 79 Ohio St.3d 459, the Ohio Supreme Court essentially threw out the requirement that the victim "is residing or has resided with the offender" as prescribed in the statute. Instead of applying R.C. 1.42 (words and phrases shall be read in context and construed according to the rules of grammar and common usage. * * *), the Court, through sociological studies of the offense of domestic violence, determined that " * * * the offense of domestic violence, as expressed in R.C. 2919.25(E)(1)(a) and related statutes, arises out of the relationship of the parties rather than their exact living circumstances."*

³ *No residency requirement specified in statute for this type of person.*

Civil domestic violence protection orders and consent agreements

Existing law provides that a person may seek certain specified relief through a court order when involved in a domestic violence situation that does not involve a criminal case.

A person (on the person's own behalf or on behalf of a family member) may seek a civil domestic violence protection order by filing a petition alleging that the respondent (the perpetrator of the domestic violence) committed domestic violence against a family or household member, describing the domestic violence, indicating the relationship of the respondent to the petitioner, and asking for relief from the court. The petitioner may request an ex parte hearing on the petition. If the court holds an ex parte hearing and issues a temporary protection order, it must hold a full hearing on the petition with notice to the respondent. (Sec. 3113.31(C) and (D).) After either an ex parte or full hearing, the court may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of domestic violence against the family or household members involved. The order or agreement issued by the court may do any of the following: (a) direct the respondent to refrain from abusing the family or household members, (b) grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or by ordering the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent and the petitioner or other family or household member, (c) when the respondent has a duty to support the petitioner or other family or household member living in the residence or household and the respondent is the sole owner or lessee of the residence or household, grant possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternative housing, (d) temporarily allocate parental rights and responsibilities for the care of, or establish temporary visitation rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or visitation rights, (e) require the respondent to maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if the respondent has a duty to support the petitioner or family or household member, (f) require the respondent, petitioner, victim of domestic violence, or any combination of those persons, to seek counseling, (g) require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member, and (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. (Sec. 3113.31(E)(1).)

This section defines "family or household member" and "person living as a spouse" in the same manner as described above under "Definitions" in "Criminal prohibition against domestic violence" with the exception that respondent is used instead of offender in the definition (sec. 3113.31(A)(3) and (4)).

Shelters for domestic violence victims

Revised Code sections 3113.33 through 3113.39 deal with shelters for victims of domestic violence, specifically the funding aspect of facilities that provide temporary residential service or facilities to family or household members who are victims of domestic violence. These sections also define "family or household member" and "person living as a spouse" in the same manner as described above under "Definitions" in "Criminal prohibition against domestic violence" with the exception that "person committing the domestic violence" is used instead of offender in the definition (sec. 3113.33(B)).

Operation of the bill

The bill restructures the definition of "family or household member" for the criminal prohibition against domestic violence in the following manner (sec. 2919.25(E)(1)):

"Family or household member" means any of the following: (a) a spouse, a person living as a spouse, or a former spouse of the offender, *if that spouse, person, or former spouse is residing with or has resided with the offender*, (b) a parent or a child of the offender, or another person related by consanguinity or affinity to the offender, *if that parent, child, or other person is residing with or has resided with the offender*, (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, *if that parent, child, or other person is residing with or has resided with the offender*, or (d) the natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

The bill restructures the definition of "family or household member" that is used for the law dealing with civil domestic violence protection order and consent agreements and the law dealing with domestic violence shelters except that it replaces "offender" with "respondent" in the civil domestic violence law

(sec. 3113.31(A)(3)) and replaces "offender" with "person committing the domestic violence" in the domestic violence shelter laws (sec. 3113.33(B)).

The bill does not modify the term "person living as a spouse."

The bill defines "residing with or has resided with" to mean "the act of living together or having lived together in the same household, dwelling place, or residence" in all of the domestic violence-related definition sections (secs. 2919.25(E)(3), 3113.31(A)(6), and 3113.33(E)).

HISTORY

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Introduced	01-26-99	p. 79

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