



H.B. 508

124th General Assembly
(As Introduced)

Reps. Schuring, Hagan, Cirelli, Willamowski, Schmidt, McGregor, Jerse, Distel, Patton, Sullivan, Otterman, Setzer, Allen, Fedor

BILL SUMMARY

- Expands the list of prior offenses that currently enhance the penalty for domestic violence to also include the misdemeanor offenses of criminal damaging or endangering or criminal mischief involving a person who was a family or household member, or the offenses of kidnapping, abduction, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated arson, arson, disrupting public services, vandalism, aggravated robbery, robbery, aggravated burglary, burglary, and breaking and entering involving a person who was a family or household member.
- Increases the penalty for domestic violence from a felony of the fifth degree to a felony of the fourth degree when the offense involves knowingly causing or attempting to cause physical harm or recklessly causing serious physical harm and the offender has a prior conviction or guilty plea to any offense listed in the prior dot point or in the existing list of prior offenses that enhance the penalty for domestic violence.
- Increases the penalty for domestic violence to a felony of the third degree when the offender has been convicted or pleaded guilty to certain prior offenses and other specific circumstances exist surrounding the offense or the offender.
- 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 aggravated murder, murder, voluntary manslaughter, kidnapping, abduction, unlawful restraint, rape, sexual battery, unlawful

sexual conduct with a minor, gross sexual imposition, aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, or criminal trespass that involves a person who was a family or household member at the time of the violation.

- Modifies the penalty for the offense of "violating a protection order" by increasing the penalty to a felony of the fifth degree when the offender has previously violated certain protection orders or to a felony of the same degree as the principal offense if the violated protection order or consent agreement was based on a felony.
- For purposes of domestic violence civil protection orders, expands the definition of domestic violence to include committing the offenses of aggravated murder, murder, voluntary manslaughter, felonious assault, aggravated assault, kidnapping, abduction, unlawful restraint, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, or criminal trespass against a person who was a family or household member at the time of the violation.

CONTENT AND OPERATION

Domestic violence

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 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 increases the penalty for domestic violence involving the first or second prohibition above from a felony of the fifth degree to a felony of the fourth degree if the offender has been convicted of *or pleaded guilty to* one of the listed prior offenses. It also expands the list of prior offenses that enhance that penalty for domestic violence for all three prohibitions to also include the misdemeanor offenses of criminal damaging or endangering and criminal mischief involving a person who was a family or household member and kidnapping, abduction, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated arson, arson, disrupting public services, vandalism, aggravated robbery, robbery, aggravated burglary, burglary, and breaking and entering. Under the bill, the penalty enhancement also applies if the offender previously has *pleaded guilty to* one of the offenses. (R.C. 2919.25(D)(3).)

The bill also creates an additional penalty enhancement for the offense of domestic violence. A violation of the first or second prohibition above is a felony of the third degree if the offender previously has been convicted of or pleaded guilty to domestic violence, a violation of a municipal ordinance that is substantially similar to domestic violence, a misdemeanor violation of assault, negligent assault, aggravated menacing, menacing by stalking, menacing, or endangering children (the bill mistakenly lists R.C. 2929.12, however, it is supposed to be R.C. 2919.22) involving a person who was a family or household member at the time of the violation, 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 violation, or a violation of felonious assault, aggravated assault, kidnapping, abduction, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated arson, arson, disrupting public services, vandalism, aggravated robbery, robbery, aggravated burglary, burglary, or breaking and entering involving a person who was a family or household member at the time of the violation, and if any of the following apply (R.C. 2919.25(D)(4)):

(1) The offender previously has been convicted of or pleaded guilty to a felony offense of violence.

(2) The offender violates a protection order while committing the violation of first or second prohibition above.

(3) The offender has a deadly weapon on or about the offender's person or under the person's control while committing the violation of first or second prohibition above.

(4) The offender threatens to kill the victim or any family or household member while committing the violation of first or second prohibition above or closely related in time to committing that violation.

(5) The offender commits the violation of first or second prohibition above in the vicinity of one or more children.

(6) The victim of the violation of first or second prohibition above is a minor.

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 offenses of aggravated murder, murder, voluntary manslaughter, kidnapping, abduction, unlawful restraint, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, or criminal trespass that involves a person who was a family or household member at the time of the violation (R.C. 2919.26(A)(1)).

The bill also expands the information that must be contained in the motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender. The motion must state that a complaint has been filed charging the named defendant and whether the named defendant has been charged with aggravated murder, murder, voluntary manslaughter, kidnapping, abduction, unlawful restraint, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, or criminal trespassing that involves a family or household member. (R.C. 2919.26(B).)

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 protection order

Existing law

R.C. 2919.27 prohibits a person from recklessly violating (1) the terms of a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or 3113.31, (2) the terms of a protection order issued pursuant to R.C. 2903.213 or 2903.214, or (3) the terms of protection order issued by a court of another state.

Whoever violates these prohibitions is guilty of violating a protection order. If the offense involves a violation of the first or third prohibition above, generally the offense is misdemeanor of the first degree. However, if the offender previously has been convicted of or pleaded guilty to two or more violations of menacing by stalking or aggravated trespass that involved the same person who is the subject of the protection order or consent agreement, or two or more violations of R.C. 2903.214 as it existed prior to July 1, 1996, or previously has been convicted of or pleaded guilty to one or more violations of a protection order, violating a protection order is a felony of the fifth degree.

If the offense involves a violation of the second prohibition above, generally violating a protection order is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of violating a protection order or of former R.C. 2919.27 involving a protection order issued pursuant to R.C. 2903.213 or 2903.214, two or more violations of aggravated menacing, menacing by stalking, menacing, or aggravated trespass that involved the same person who is the subject of the protection order, or two or more violations of R.C. 2903.214 as it existed prior to July 1, 1996, violating a protection order is a felony of the fifth degree. (R.C. 2919.27.)

Operation of the bill

The bill maintains the same three prohibitions listed above; however, there no longer exists a separate penalty for the second prohibition above. The bill eliminates the separate penalty for a violation of the second prohibition above. Also the bill expands the offenses that enhance the penalty for violating a protection order to include prior violations of protection orders issued pursuant to R.C. 2903.213 or 2903.214, two or more violations of aggravated menacing or menacing, and two or more violations of R.C. 2903.214 as it existed prior to July 1, 1996.

The bill also provides that if the offender violates a protection order or consent agreement for which the principal offense was a felony, violating a protection order is a felony of the same degree as the principal offense. (R.C. 2919.27(B).)

Domestic violence civil protection orders

Operation of the bill

For the purposes of civil protection orders issued pursuant to R.C. 3113.31, the bill expands the definition of domestic violence to include committing the offenses of aggravated murder, murder, voluntary manslaughter, felonious assault, aggravated assault, kidnapping, abduction, unlawful restraint, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, aggravated arson, arson, vandalism, criminal damaging or endangering, criminal mischief, aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, or criminal trespass against a person who was a family or household member at the time of the violation. (R.C. 3113.31(A).)

Therefore, all of the provisions regarding civil protection orders issued pursuant to R.C. 3113.31 apply when any of the offenses listed above involves a family or household member at the time of the offense.

Definitions

Existing law, unchanged by the bill defines the following terms for the offense of domestic violence and temporary protection orders issued under R.C. 2919.26:

"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)).

Similar definitions exist for civil protection orders (R.C. 3113.31(A)).



HISTORY

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