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Bill Analysis
Legislative Service Commission

H.B. 540

125th General Assembly
(As Introduced)

Reps. Reidelbach, Trakas, Wolpert, Fessler, McGregor, Webster, Hoops, Hollister, Latta, Clancy, Setzer, Kearns, Schaffer, Grendell, Strahorn, Perry, Chandler

BILL SUMMARY

- Authorizes a person who files a criminal complaint alleging a violation of any provision of R.C. 2907.02 through 2907.07 or a substantially similar municipal ordinance, the alleged victim, or a member of the alleged victim's family or household to file a motion asking the court to issue a temporary protection order as a pretrial condition of release of the alleged offender in addition to bail.
- Authorizes a person to file a petition on the person's own behalf requesting the issuance of a civil protection order alleging that the respondent has violated a provision of R.C. 2907.02 through 2907.07.
- Establishes criminal penalties for a violation of a temporary protection order or a civil protection order issued under the bill.
- Disqualifies a person subject to a temporary protection order or a civil protection order issued under the bill from having a license to carry a concealed handgun.
- Imposes duties on certain public officials with respect to information about and enforcement of temporary protection orders and civil protection orders issued under the bill.

CONTENT AND OPERATION

Criminal temporary protection order

The bill authorizes a person who files a criminal complaint alleging a violation of any provision of R.C. 2907.02 through 2907.07 or a substantially

similar municipal ordinance, the alleged victim, or a member of the alleged victim's family or household to file a motion asking the court to issue a temporary order of protection as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The person filing the motion must file it with the clerk of the court with jurisdiction of the case and may do so at any time after the filing of the complaint. The offenses covered by R.C. 2907.02 through 2907.07 include rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and importuning. The bill requires that the motion be prepared on a form provided by the clerk and requires the court clerk to provide a form for the motion in substantially the form set forth in the bill. At all stages of a proceeding on a motion for a temporary protection order, a petitioner may be accompanied by a victim advocate. (R.C. 2907.13(A) and (B).)

The court must conduct a hearing to determine whether to issue a temporary protection order as soon as possible after the motion is filed, but in no case more than 24 hours after filing. The person who requested the motion must appear and provide the court with any information the court requests concerning the basis of the motion. If the person 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 alleged offense, another person who can provide the necessary information to the court may appear instead. If the court finds that the safety and protection of the complainant or alleged victim may be impaired by the continued presence of the alleged offender, it may issue a temporary protection order as a pretrial condition of release designed to ensure the safety and protection of the complainant or alleged victim, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or alleged victim or family or household member.

If the temporary protection order includes a requirement to refrain from entering any such place, it must clearly state that the order cannot be waived or nullified by an invitation or other consent to enter given by the complainant, alleged victim, or family or household member. This provision does not limit a court's discretion to determine that a person did not violate the current prohibition against violating a protection order or a similar municipal ordinance or was not in contempt of court. (R.C. 2907.13(C).)

Upon the filing of a criminal complaint alleging a violation of any provision of R.C. 2907.02 through 2907.07 or a substantially similar municipal ordinance, the court may on its own motion issue a temporary protection order as a pretrial condition of release if it finds that the continued presence of the alleged offender might impair the safety and protection of the complainant or alleged victim. An order issued upon the court's own motion may only contain the terms

authorized for such an order issued upon the filing of a motion. (R.C. 2907.13(D)(1) and (3).)

If the court issues a temporary protection order as an *ex parte* order (without notice to the alleged offender), it must conduct a hearing in the presence of the alleged offender to determine if the order should be modified or revoked. It must hold the hearing as soon as possible after the issuance of the order not later than the next court business day after the alleged offender was arrested or at the time the alleged offender appears pursuant to summons. (R.C. 2907.13(D)(2).)

The bill grants to municipal courts and county courts original jurisdiction to issue and enforce temporary protection orders under the bill (R.C. 1901.18(A)(9) and 1901.19(A)(6)). If a municipal or county court issues a temporary protection order under the bill and the alleged offender is thereafter bound over to the court of common pleas for prosecution of a felony arising out of the same circumstances that led to the issuance of the order, the order remains in effect as if issued by the court of common pleas while the charges are pending in the court of common pleas until the disposition of the underlying charges or the issuance of a civil protection order under the bill. The court of common pleas has exclusive jurisdiction to modify the order.

A temporary protection order issued under the bill remains in effect until disposition of the criminal proceeding arising out of the complaint that led to the order or the issuance under the bill (see "**Civil protection order**," below) of a civil protection order arising out of the same activities that gave rise to the complaint. (R.C. 2907.13(D)(4) and (E)(2).)

The court must issue copies of a temporary protection order to the complainant, the alleged victim, the person who requested the order, the defendant (to be delivered the day the order is issued), and all law enforcement agencies that have jurisdiction to enforce the order. If the order is issued by a municipal or county court and the defendant is bound over to the court of common pleas, the court must have a copy delivered to that court of common pleas. (R.C. 2907.13(G).)

Upon violation of a temporary protection order issued under the bill, the court may issue another temporary protection order that modifies the original order. The person who violates the order also violates the current prohibition in R.C. 2919.27 against violating various protection orders and consent agreements (see "**Violation of protection order**," below) (R.C. 2907.13(H) and 2919.27(A)(4)).

The bill prohibits any court or unit of state or local government from charging any fee, cost, deposit, or money in connection with the filing of a motion



requesting a temporary protection order, in connection with the filing, issuance, registration, or service of such an order, or for obtaining a certified copy of such an order (R.C. 2907.13(I)). A temporary protection order is in addition to and not a part of any bail set under Criminal Rule 46. The issuance of such an order is not a finding that the alleged offender committed the alleged offense, and the order may not be introduced at the alleged offender's trial as evidence that the defendant committed the alleged offense. If a person meets the criteria for bail under Civil Rule 46 and executes or posts bail, the person may not be held in custody pending a hearing under the bill on a motion for a temporary protection order. (R.C. 2907.13(E)(1) and (3) and (F).)

Civil protection order

The bill authorizes a person to file a petition on the person's own behalf requesting the issuance of a civil protection order and alleging that the respondent has violated a provision of R.C. 2907.02 through 2907.07 (the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and importuning). The petition must be filed in the court of common pleas of the county where the petitioner resides. The court must conduct the proceedings in accordance with the Rules of Civil Procedure, except that it may issue a civil protection order under the bill with or without bond. No court or unit of state or local government may charge any fee, cost, deposit, or money in connection with the filing of a petition under the bill, in connection with the filing, issuance, registration, or service of a protection order, or for obtaining a certified copy of a protection order. At all stages of the proceeding, the petitioner may be accompanied by a victim advocate. (R.C. 2907.14(A), (B), (C), (G), and (H).)

The petitioner may request an *ex parte* order, in which case the court holds the hearing on the day the petition is filed. For good cause shown at the *ex parte* hearing, the court may issue any temporary orders, with or without bond, that it finds necessary to protect the petitioner, including an order that requires the respondent to not enter the residence, school, business, or place of employment of the petitioner or of a family or household member or grants other equitable and fair relief. Immediate and present danger of harm to the petitioner constitutes good cause and includes when the respondent has threatened the petitioner with bodily harm or in which the respondent previously has been convicted of or pleaded guilty to an offense that constitutes a violation of any provision of R.C. 2907.02 through 2907.07. If the court issues an *ex parte* order after a hearing, it must schedule a full hearing, with notice to the defendant, to be held within ten days after the *ex parte* hearing. The court must give the respondent an opportunity to be heard at the full hearing. The court must hold the full hearing on that date unless it grants a continuance under the bill.

The court may grant a continuance of the full hearing to a reasonable time determined by the court if the respondent was not served with the petition and notice of the full hearing, on consent of the parties, to allow a party to obtain counsel, or for other good cause. An *ex parte* order does not expire merely because the respondent was not served with notice of the full hearing or because a continuance was granted. If an *ex parte* order is not requested or if one is not issued after an *ex parte* hearing, the court proceeds as in a normal civil action and may grant a full hearing on the matter. (R.C. 2907.14(D).)

After an *ex parte* or full hearing, the court may grant any protection order, with or without bond, granting equitable and fair relief. The order may require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner or of a member of the petitioner's family or household. If the order includes such a requirement, it must clearly state that the order cannot be waived or nullified by an invitation or other consent to enter given by the petitioner or other family or household member. This type of order does not limit the discretion of the court to determine that a respondent charged with violating a protection order or with contempt of court did not commit the violation or was not in contempt of court. An order remains in effect until a date certain set by the court, but not more than five years from the date of issuance. An order may be renewed in the same manner in which it was originally issued. The order may grant any other relief the court considers equitable and fair. (R.C. 2907.14(E).)

The court must issue copies of a protection order to the petitioner, respondent (to be delivered on the same day the order is issued), and to all law enforcement agencies that have jurisdiction to enforce it. An order entered under these provisions of the bill, other than an *ex parte* order, that grants or refuses to grant a protection order is a final, appealable order. The remedies provided in the bill are in addition to any other available civil or criminal remedies. (R.C. 2907.14(F) and (G).)

A person who violates a civil protection order issued under the bill may be criminally prosecuted under current law or punished for contempt of court, or both. However, a person punished for contempt is entitled to credit for the punishment imposed for contempt upon conviction pursuant to a criminal prosecution. A person convicted for a violation of a civil protection order issued under the bill may not thereafter be punished for contempt arising out of the same activity. (R.C. 2907.14(I).)

Violation of protection order

Current law prohibits any person from violating the terms of several types of protection orders and consent agreements issued or agreed to by an Ohio court or court of another state. A violation of this prohibition is the offense of "violating

a protection order," which ranges in severity from a misdemeanor of the first degree to a felony of the third degree. (R.C. 2919.27.) In that same prohibition, the bill prohibits any person from violating a temporary protection order or civil protection order issued under the bill, designates a violation of its prohibition as the offense of "violating a protection order," and provides that the violation is a criminal offense of the same degree as the alleged violation of R.C. 2907.02 through 2907.07 that resulted in the issuance of the order (R.C. 2919.27(A)(4) and (B)(3)).

Before it sets bail, the court may order that a defendant charged with a violation of a temporary protection order or a civil protection order issued under the bill to undergo a mental evaluation if the violation allegedly caused physical harm to the person or the property of the person covered by the order or caused the person covered by the order to fear such harm (R.C. 2919.271(A)(1)(a)(ii) and 2937.23(B)(2)).

Effect of protection order on concealed carry license

For purposes of the concealed carry law, a temporary protection order issued under the bill is a temporary protection order and a civil protection order issued under the bill is a civil protection order (R.C. 2923.124(I) and (J)). Being subject to such an order disqualifies a person from having a license to carry a concealed handgun (R.C. 2923.125(D)(1)(j), not in the bill).

Duties of public officials

Attorney General's victims rights pamphlet

Current law requires the Attorney General to prepare a pamphlet for distribution to law enforcement agencies, prosecuting authorities, and organizations that represent or provide services for victims of crime that sets forth a compilation of all statutes relative to the rights of crime victims (R.C. 109.42). The bill adds to the list of required information the right of a victim to seek the issuance of a temporary protection order or a civil protection order under the bill (R.C. 2907.13 or 2907.14) and to be accompanied by a victim advocate in proceedings under those sections (R.C. 109.42(A)(18)).

Municipal police force enforcement

The bill adds the enforcement of temporary protection orders and civil protection orders to the duties of municipal police forces (R.C. 737.11).

Indexes and registries of temporary protection orders and civil protection orders

The bill requires law enforcement agencies to establish and maintain an index for the temporary protection orders and protection orders delivered to the agencies pursuant to the bill. The agency must note on the index, the date and time of the receipt of the order by the agency. A complainant or alleged victim who obtains a temporary protection order under the bill or a petitioner who obtains a protection order under the bill may provide notice of the issuance or approval 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 that order in the other county and filing a copy of the registered order with a law enforcement agency in the other county. (R.C. 2907.141(B) and (C)(1).)

A petitioner may register a temporary protection order or protection order in a county other than the county in which the court that issued the order is located in the following manner (R.C. 2907.141(C)(2)):

(1) The petitioner must obtain a certified copy of the order from the clerk of the court that issued the order and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order is to be registered.

(2) Upon accepting the certified copy of the order for registration, the clerk must place an endorsement of registration on the order and give the petitioner a copy of the order that bears that proof of registration.

The clerk of each court of common pleas, municipal court, and county court must maintain a registry of certified copies of temporary protection orders and protection orders that have been issued by courts in other counties and that have been registered with the clerk. Regardless of whether the complainant, alleged victim, or petitioner has registered the order in the county in which the officer's agency has jurisdiction pursuant to the above-discussed provisions, any officer of a law enforcement agency must enforce a temporary protection order or protection order issued by any court in this state in accordance with the provisions of the order, including removing the respondent from the premises, if appropriate. (R.C. 2907.141(C)(3) and (D).)

Any law enforcement agency that investigates a violation of any provision of sections 2907.02 to 2907.07 of the Revised Code must provide information to the alleged victim regarding the relief available under the bill with respect to the issuance of temporary protection orders and civil protection orders (R.C. 2907.141(E)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-10-04	p. 2146

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