



H.B. 161

126th General Assembly
(As Introduced)

Reps. Healy, Perry, Carano, C. Evans, McGregor

BILL SUMMARY

- Excludes from the definition of "family or household member" in the criminal and civil domestic violence laws a person living as a spouse.
 - Includes in the definition of "family or household member" in the criminal and civil domestic violence laws any person who is residing with the offender.
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CONTENT AND OPERATION

The criminal offense of domestic violence

Current law

Current law prohibits a person from doing any of the following (R.C. 2919.25):

(1) Knowingly causing or attempting to cause physical harm to a family or household member (M1, F4, or F3);

(2) Recklessly causing serious physical harm to a family or household member (M1, F4, or F3);

(3) By threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member (M4, M2, or M1).

A violation of any of these prohibitions is the offense of "domestic violence." The penalty for domestic violence ranges from a misdemeanor of the fourth degree to a felony of the third degree. (R.C. 2919.25(D).)

Current law defines "family or household member" as meaning any of the following persons (R.C. 2919.25(F)(1)):

(1) One of the following persons 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 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.

"Person living as a spouse" is defined by current law as meaning a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabitating with the offender, or who otherwise has cohabitated with the offender within five years prior to the date of the alleged commission of domestic violence (R.C. 2919.25(F)(2)).

The bill

The bill changes the definition of "family or household member" for purposes of the offense of domestic violence to remove references to a person living as a spouse and to include anyone residing with the offender. Under the bill, "family or household member" means any of the following (R.C. 2919.25(F)):

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

(a) A spouse or a former spouse of the offender;

(b) A parent or child of the offender, or another person related by consanguinity or affinity to the offender;

(c) A parent or a child of a spouse or former spouse of the offender, or another person related by consanguinity or affinity to 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) *Any person who is residing with the offender.*

Civil protection order available for a victim of domestic violence

Current law

Under current law, a victim of domestic violence may apply for a civil protection order or consent agreement.¹ The petition for a protection order must contain an allegation that the respondent has engaged in domestic violence against a *family or household member of the respondent*, including a description of the nature and extent of the domestic violence; the relationship of the respondent to the petitioner, and to the victim if other than the petitioner; and a request for relief. (R.C. 3113.31(C).) If a court grants a protection order or consent agreement, the order or agreement may contain any of the following provisions (R.C. 3113.31(E)(1)):

(1) A direction that the respondent refrain from abusing the family or household members;

(2) A grant of 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 an order to 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;

(3) When the respondent has a duty to support the petitioner or other family or household member living in the residence and the respondent is the sole owner or lessee of the residence, a grant of possession of the residence 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;

(4) A temporary allocation of parental rights and responsibilities for the care of, or an establishment of temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation

¹ *For purposes of a civil protection order, "domestic violence" is defined as the occurrence of one or more of the following acts against a family or household member (R.C. 3113.31(A)(1)): (1) attempting to cause or recklessly causing bodily injury, (2) placing another person by the threat of force in fear of imminent physical harm or committing a violation of R.C. 2903.211 (the offense of menacing by stalking) or R.C. 2911.211 (the offense of aggravated trespass), or (3) committing any act with respect to a child that would result in the child being an abused child.*

of parental rights and responsibilities for the minor children or parenting time rights;

(5) A requirement that the respondent 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;

(6) A requirement that the respondent, petitioner, victim of domestic violence, or any combination of those persons, seek counseling;

(7) A requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(8) A grant of other relief that the court considers equitable and fair, including, but not limited to, an order that the respondent 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.

A protection order or consent agreement approved by a court under R.C. 3113.31 is valid for a specific time period, not to exceed five years from the date of issuance or approval (R.C. 3113.31(E)(3)(a)).

Current law defines a "family or household member" for purposes of the law dealing with civil protection orders similarly to the definition that is used for the offense of domestic violence (R.C. 3113.31(A)(3)):

(1) One of the following persons who is residing or has resided with the respondent:

(a) A spouse, *person living as a spouse*, or former spouse of the respondent;

(b) A parent or child of the respondent, or another person related by consanguinity or affinity to the respondent;

(c) A parent or a child of a spouse, *person living as a spouse*, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, *person living as a spouse*, or former spouse of the respondent.

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

Current law defines "person living as a spouse" for purposes of the law dealing with civil protection orders in the same manner as it is defined for the offense of domestic violence (R.C. 3113.31(A)(4)).

The bill

As the bill does to the definition of a "family or household member" in the criminal offense of domestic violence, the bill changes the definition of "family or household member" in the civil protection order domestic violence statute to remove references to a person living as a spouse and to include anyone residing with the respondent. Under the bill, "family or household member" means any of the following (R.C. 3113.31(A)(3)):

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

(a) A spouse or a former spouse of the respondent;

(b) A parent or child of the respondent, or another person related by consanguinity or affinity to the respondent;

(c) A parent or a child of a spouse or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse or former spouse of the respondent.

(2) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent;

(3) *Any person who is residing with the respondent.*

It also eliminates the definition of "person living as a spouse."

Shelters for domestic violence victims

Current law

R.C. 3113.33 to 3113.40 establishes a funding mechanism for shelters for domestic violence victims. Under these provisions, "domestic violence" means attempting to cause or causing bodily injury to a family or household member by threat of force in fear of imminent physical harm (R.C. 3113.33(A).) Current law defines a "family or household member" similarly to the definition in the offense of domestic violence and the domestic violence civil protection statute as meaning one of the following (R.C. 3113.33(B)):

(1) Any of the following who is residing or has resided with the person committing the domestic violence:

(a) A spouse, *a person living as a spouse*, or a former spouse of the person committing the domestic violence;

(b) A parent or child of the person committing the domestic violence, or another person related by consanguinity or affinity to the person committing the domestic violence;

(c) A parent or a child of a spouse, *person living as a spouse*, or former spouse of the person committing domestic violence, or another person related by consanguinity or affinity to a spouse, *person living as a spouse*, or former spouse of the person committing domestic violence.

(d) The dependents of any person listed in (a), (b), or (c), above.

(2) The natural parent of any child of whom the person committing the domestic violence is the other natural parent or is the putative other natural parent.

The bill

As the bill does to the definition of a "family or household member" in the criminal offense of domestic violence and the domestic violence civil protection order statutes, the bill changes the definition of "family or household member" in the law governing funding for domestic violence shelters to remove references to a person living as a spouse and to include anyone residing with the person committing the domestic violence. Under the bill, "family or household member" means any of the following (R.C. 3113.33(B)):

(1) Any of the following who is residing or has resided with the person committing the domestic violence:

(a) A spouse or a former spouse of the person committing the domestic violence;

(b) A parent or child of the person committing the domestic violence, or another person related by consanguinity or affinity to the person committing the domestic violence;

(c) A parent or a child of a spouse or former spouse of the person committing the domestic violence, or another person related by consanguinity or affinity to a spouse or former spouse of the person committing the domestic violence.

(d) The dependents of any person listed in (a), (b), or (c), above.

(2) The natural parent of any child of whom the person committing the domestic violence is the other natural parent or is the putative other natural parent;

(3) *Any person who is residing with the person committing the domestic violence.*

The bill also eliminates the definition of "person living as a spouse."

Other Revised Code provisions affected by the definition of "family or household member"

A number of Revised Code provisions, not included in the bill, refer to the definition of "family or household member" and thus are affected by the bill's change in definition. These provisions include the following:

(1) R.C. 1905.01 (lack of municipal court jurisdiction with specified violations that involve a family or household member of the defendant);

(2) R.C. 2903.212 (considerations in setting bail when a person is charged with a violation of R.C. 2903.21, 2903.211, 2903.22, or 2911.211 when the victim is someone other than a family or household member of the offender);²

(3) R.C. 2903.213 (protection order for a victim who is someone other than a family or household member of the offender for a violation of R.C. 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211);³

(4) R.C. 2903.214 (anti-menacing by stalking protection orders);

(5) R.C. 2919.26 (protection order for a person who is the family or household member of an offender who is alleged to have committed a violation of R.C. 2909.06, 2909.07, 2911.12, or 2911.211);⁴

² R.C. 2903.21 is the offense of aggravated menacing; R.C. 2903.211 is the offense of menacing by stalking; R.C. 2903.22 is the offense of menacing; and R.C. 2911.211 is the offense of aggravated trespass.

³ R.C. 2903.11, 2903.12, and 2903.13 are the assault prohibitions.

⁴ R.C. 2909.06 is the offense of criminal damaging or endangering; R.C. 2909.07 is the offense of criminal mischief; R.C. 2911.12 is the offense of burglary; and R.C. 2911.211 is the offense of aggravated trespass.

(6) R.C. 2929.01 (the definition of "family or household member" for purposes of the Criminal Sentencing Law);

(7) R.C. 2929.12 (including under the seriousness considerations of the Criminal Sentencing Law whether the commission of domestic violence or a violation of R.C. 2903.11, 2903.12, or 2903.13 involving a person who was a family or household member at the time of the violation was committed in the vicinity of a child other than a victim of the offense and the offender is the parent, guardian, custodian, or person in loco parentis to the child);

(8) R.C. 2935.03 (the preferred course of action to arrest domestic violence offenders);

(9) R.C. 2945.04 (order to grant possession of a residence to a complainant who alleges that the defendant is likely to commit a criminal offense against the complainant or the complainant's property when the complainant and defendant cohabitate but are not family or household members);

(10) R.C. 3901.21 (classifying as an unfair or deceptive trade practice restrictions on life or health insurance because the applicant is a domestic violence victim).

COMMENT

Section 11, Article XV of the Ohio Constitution provides as follows:

Only a union between one man and one woman may be a marriage valid in or recognized by this state and its political subdivisions. *This state and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effect of marriage* (Emphasis added.)

On March 23, 2005, in *State v. Burk* the Cuyahoga County Court of Common Pleas held that R.C. 2919.25 is incompatible with Art. XV, § 11 insofar as R.C. 2919.25 recognizes as a "family or household member" a person who is not married to the offender but is "living as a spouse." In this case, a defendant charged with domestic violence argued that R.C. 2919.25 violates Art. XV, § 11 because, as applied to unmarried couples who are cohabitating, it recognizes a

legal status for such relationships that "intends to approximate the design, qualities, significance, or effect of marriage."⁵

At least one other Ohio court, the Franklin County Court of Common Pleas when faced with the same issue ruled that R.C. 2919.25 *did not* violate Art. XV, § 11.⁶

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 03-31-05 | p. 357 |

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⁵ *Cuy. Ct. Common Pleas Case No. 462510.*

⁶ *See Ohio v. Rodgers, Frank. Ct. Common Pleas, Case No. 05CR-269, Feb. 25, 2005.*