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Bill Analysis
Legislative Service Commission

H.B. 247

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(As Introduced)

Reps. Brown, Koziura, Chandler, Ujvagi, S. Williams, B. Williams, Yuko, Brady, Miller, DeGeeter, Otterman, Domenick, Luckie, Wagoner, Strahorn, Skindell, DeBose, J. McGregor, Driehaus

BILL SUMMARY

- Permits any person who is 18 years of age or older to file a motion for a protection order on behalf of a child, upon the child's request.
- Creates an additional ground upon which a protection order may be sought to protect a child to include that (1) the respondent committed felonious assault, aggravated assault, assault, menacing by stalking, menacing, or aggravated trespass, or a substantially similar municipal violation, against the child, (2) the person to be protected by the protection order was less than 18 years of age at the time of the alleged violation, and (3) the child is a person with whom the respondent has or had a dating relationship.
- Expands the jurisdiction of the juvenile court to hear, determine, and enforce matters involving protection orders against a child.
- Permits certain persons to file a motion with the court for a protection order as a pretrial condition of release of the alleged offender, involving children in a dating relationship.
- Includes a foster parent in the definition of "family or household member" in the criminal and civil domestic violence laws.

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CONTENT AND OPERATION

Protection order for a child in a dating relationship

Current law

Generally, any person may petition the court for a protection order from another person allegedly engaging in a violation of R.C. 2903.211 (menacing by stalking) or a sexually oriented offense (see **COMMENT**).¹ Additionally, any parent or adult household member may seek such relief on behalf of any other family or household member. The petition must be filed with the court of common pleas in the county in which the person to be protected by the protection order resides and must contain both of the following:

(1) An allegation that the respondent engaged in a violation of R.C. 2903.211 (menacing by stalking), or committed a sexually oriented offense, against the person to be protected by the protection order, including a description of the nature and extent of the violation.

(2) A request for relief.

Additionally, the petitioner may request a temporary ex parte order, and the court may issue such an order if the court finds it necessary for the safety and protection of the person to be protected, including that person is in immediate and present danger. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the protection order with bodily harm, or in which the respondent previously has been convicted of or pleaded guilty to a violation of R.C. 2903.211 (menacing by

¹ The As Introduced version of the bill contains sections that do not reflect the amendments to those sections made by Am. Sub. S.B. 260 of the 126th General Assembly, which modified the law regarding protection orders for victims of sexually oriented offenses.

stalking) or a sexually oriented offense against the person to be protected by the protection order. An ex parte hearing is followed by a full hearing within ten days.

After the appropriate hearings, the court may issue a protection order that ensures the safety and protection of the person to be protected. In the protection order, the court may also include a provision that requires the petitioner to do, or refrain from doing, an act that the court may require the respondent to do, or refrain from doing. This provision may be included in the protection order only when all of the following circumstances exist:

- (1) The respondent files a separate petition for a protection order.
- (2) The petitioner is served with notice of the respondent's petition at least 48 hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice.
- (3) If the petitioner has requested an ex parte order, the court does not delay any hearing beyond the time specified in the order to consolidate the hearing with a hearing on the petition filed by the respondent.
- (4) After a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed a violation of R.C. 2903.211 (menacing by stalking), has committed a sexually oriented offense, or has violated another protection order relative to the person to be protected by the protection order. (R.C. 2903.214(A) through (E).)

The bill

Under the bill, if the person to be protected by the protection order is a child who is less than 18 years of age, the child may file a motion requesting a protection order on the child's own behalf, or, upon the child's request, a person who is 18 years of age or older may file a motion requesting a protection order for the child. And, if the respondent is less than 18 years of age, the motion may also be filed in the juvenile court of the county in which the person to be protected resides. (R.C. 2903.214(A)(1) and (C).) The bill further specifies that the juvenile court has exclusive original jurisdiction to hear and determine petitions for such a protection order and to enforce protection orders against a child for no longer than five years or until the child is 21 years old, whichever occurs first (R.C. 2151.23(A)(16)).

The bill also expands the allegations under which a person may petition the court for a protection order to include R.C. 2903.11 (felonious assault), R.C. 2903.12 (aggravated assault), R.C. 2903.13 (assault), R.C. 2903.21 (aggravated menacing), R.C. 2903.211 (menacing by stalking), R.C. 2903.22 (menacing), R.C. 2911.211 (aggravated trespassing) or a violation of a substantially similar municipal ordinance, if the person to be protected by the protection order was less than 18 years of age at the time of the alleged violation and is a person with whom the respondent has or had a "dating relationship" (R.C. 2903.214(C)(2)).

The bill defines "dating relationship" as frequent, intimate associations between two people, primarily characterized by the expectation of affectional involvement. In determining whether a dating relationship exists or existed between the respondent and the person to be protected by the protection order, the court must consider all of the following factors and any other factors the court considers relevant:

- (1) The nature of the relationship;
- (2) The length of time the relationship has existed or existed;
- (3) The frequency of interaction between the respondent and the person to be protected by the protection order;
- (4) The time since termination of the relationship, if applicable.

"Dating relationship" does not include a casual relationship or an ordinary fraternization between two individuals in a social context. (R.C. 2903.214(A)(5).)

The bill also allows the court to consider these allegations when determining whether to issue an ex parte order. The bill also expands the circumstances under which the court may require the petitioner to do, or refrain from doing, an act to include situations in which both the petitioner and respondent are less than 18 years of age, have had or have a dating relationship, and the petitioner has committed an act that would be a violation of one of the sections described above against the respondent. (R.C. 2903.214(D)(1) and (E)(3)(d).)

Pretrial condition of release. Generally under current law, a complainant, alleged victim, or family or household member of an alleged victim may file a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender, in addition to any bail set, upon the filing of a complaint that alleges a violation of R.C. 2903.11 (felonious assault), R.C. 2903.12 (aggravated assault), R.C. 2903.13 (assault), R.C. 2903.21 (aggravated menacing), R.C. 2903.211 (menacing by stalking), R.C. 2903.22 (menacing), R.C.

2911.211 (aggravated trespassing), or a violation of a substantially similar municipal ordinance.

The bill adds that if the complainant or alleged victim is a child who is under 18 years old, the child may file a motion requesting the issuance of such a protection order for the alleged victim, or, upon the child's request, a person who is 18 years old or older may file a motion requesting such a protection order for the alleged victim (R.C. 2903.213(A)).

Inclusion of foster parents as victims under the domestic violence laws

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 (a violation of which is a M1, F4, or F3);

(2) Recklessly causing serious physical harm to a family or household member (a violation of which is a 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 (a violation of which is a M4, M2, or M1).

A violation of any of these prohibitions is the offense of "domestic violence."

Current law defines a "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, 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 child of a spouse, person living as a spouse, or a 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.

The bill. The bill adds a foster parent to the definition of "family or household member," so that a "family or household member" means, among other persons, a parent, foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender (R.C. 2919.25(F)(1)(a)(ii)).

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.² 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,

² 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 (menacing by stalking) or R.C. 2911.211 (aggravated trespass), (3) committing any act with respect to a child that would result in the child being an abused child, or (4) committing a sexually oriented offense.

minor children, if no other court has determined, or is determining, the allocation 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 generally 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.

The bill. The bill expands the definition of "family or household member" to include a foster parent; thus, a foster parent could apply for a civil protection order or consent agreement under the procedure discussed above in "**Current law.**" (R.C. 3113.31(A)(3).)

The bill also allows victims of domestic violence to apply for a civil protection order or consent agreement in the juvenile court of the county in which the victim resides if the respondent is under 18 years old (R.C. 3113.31(A)(2)).

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. The bill expands the definition of "family or household member" in that law to include a foster parent. (R.C. 3113.33(B)(1)(b).)

COMMENT

"Sexually oriented offense" means any of the following (R.C. 2950.01(D)):

(1) Any of the following violations or offenses committed by a person 18 years of age or older:

(a) Regardless of the age of the victim of the offense, a violation of R.C. 2907.02 (rape), R.C. 2907.03 (sexual battery), R.C. 2907.05 (gross sexual imposition), or R.C. 2907.07 (importuning);

(b) Any of the following offenses involving a minor, in the circumstances specified:

(i) A violation of R.C. 2905.01(A)(4) (kidnapping to engage in sexual activity with the victim against the victim's will), R.C. 2907.04 (unlawful sexual conduct with a minor), R.C. 2907.06 (sexual imposition), or R.C. 2907.08 (voyeurism), when the victim of the offense is under 18 years of age;

(ii) A violation of R.C. 2907.21 (compelling prostitution) when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age;

(iii) A violation of R.C. 2907.321(A)(1) (pandering obscenity involving a minor when the offender creates, reproduces, or publishes any obscene material that has a minor as one of its participants or portrayed observers), R.C. 2907.321(A)(3) (pandering obscenity involving a minor when the offender creates, directs, or produces an obscene performance that has a minor as one of its participants), R.C. 2907.322(A)(1) (pandering sexually oriented matter involving a minor when the offender creates, records, photographs, films, develops, reproduces, or publishes any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality), or R.C. 2907.322(A)(3) (pandering sexually oriented matter involving a minor when the offender creates, directs, or produces a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality);

(iv) A violation of R.C. 2907.323(A)(1) or (2) (illegal use of a minor in a nudity-oriented material or performance in specified circumstances);

(v) A violation of R.C. 2919.22(B)(5) (child endangering when the offender entices, coerces, permits, encourages, compels, hires, employs, uses, or allows a child under 18 years of age or a mentally or physically handicapped child under 21 years of age to act, model, or in any other way participate in, or be

photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter) when the child who is involved in the offense is under 18 years of age;

(vi) A violation of R.C. 2905.01(A)(1), (2), (3), or (5) (kidnapping), R.C. 2903.211 (menacing by stalking), R.C. 2905.02 (abduction), R.C. 2905.03 (unlawful restraint), or R.C. 2905.05 (criminal child enticement), or of former R.C. 2905.04 (child stealing), when the victim of the offense is under 18 years of age and the offense is committed with a sexual motivation.

(c) Regardless of the age of the victim of the offense, a violation of R.C. 2903.01 (aggravated murder), R.C. 2903.02 (murder), R.C. 2903.11 (felonious assault), R.C. 2905.01 (kidnapping), or R.C. 2903.04(A) (involuntary manslaughter in specified circumstances), that is committed with a sexual motivation;

(d) A violent sex offense, or a designated homicide, assault, or kidnapping offense if the offender also was convicted of or pleaded guilty to a sexual motivation specification that was included in the indictment, count in the indictment, or information charging the designated homicide, assault, or kidnapping offense;

(e) A violation of R.C. 2907.06 (sexual imposition) or R.C. 2907.08 (voyeurism) when the victim of the offense is 18 years of age or older, or a violation of R.C. 2903.211 (menacing by stalking) when the victim of the offense is 18 years of age or older and the offense is committed with a sexual motivation;

(f) A violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in paragraph (1)(a), (b), (c), (d), or (e) above;

(g) An attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (1)(a), (b), (c), (d), (e), or (f) above.

(2) An act committed by a person under 18 years of age that is any of the following:

(a) Subject to paragraph (2)(i) below, regardless of the age of the victim of the violation, a violation of R.C. 2907.02, 2907.03, 2907.05, or 2907.07;

(b) Subject to paragraph (2)(i) below, any of the following acts involving a minor in the circumstances specified:

(i) A violation of R.C. 2905.01(A)(4) or R.C. 2907.06 or 2907.08 when the victim of the violation is under 18 years of age;

(ii) A violation of R.C. 2907.21 when the person who is compelled, induced, procured, encouraged, solicited, requested, or facilitated to engage in, paid or agreed to be paid for, or allowed to engage in the sexual activity in question is under 18 years of age;

(iii) A violation of R.C. 2919.22(B)(5) when the child who is involved in the violation is under 18 years of age;

(iv) A violation of R.C. 2905.01(A)(1), (2), (3), or (5), R.C. 2903.211, or former R.C. 2905.04, when the victim of the violation is under 18 years of age and the offense is committed with a sexual motivation.

(c) Subject to paragraph (2)(i) below, any of the following:

(i) Any violent sex offense that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(ii) Any designated homicide, assault, or kidnapping offense if that offense, if committed by an adult, would be a felony of the first, second, third, or fourth degree and if the court determined that, if the child was an adult, the child would be guilty of a sexual motivation specification regarding that offense.

(d) Subject to paragraph (2)(i) below, a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2905.02, a violation of R.C. 2903.04(A), or an attempt to violate any of those sections or that division that is committed with a sexual motivation;

(e) Subject to paragraph (2)(i) below, a violation of R.C. 2907.321(A)(1) or (3), 2907.322(A)(1) or (3), or 2907.323(A)(1) or (2), or an attempt to violate any of those divisions, if the person who violates or attempts to violate the division is four or more years older than the minor who is the victim of the violation;

(f) Subject to paragraph (2)(i) below, a violation of R.C. 2907.06 or 2907.08 when the victim of the violation is 18 years of age or older, or a violation of R.C. 2903.211 when the victim of the violation is 18 years of age or older and the offense is committed with a sexual motivation;

(g) Subject to paragraph (2)(i) below, any violation of any former law of this state, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States, that is or was substantially equivalent to any offense listed in paragraph (2)(a), (b), (c), (d), (e), or (f) above and that, if committed by an adult, would be a felony of the first, second, third, or fourth degree;

(h) Subject to paragraph (2)(i) below, any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in paragraph (2)(a), (b), (c), (d), (e), (f), or (g) above;

(i) If the child's case has been transferred for criminal prosecution under R.C. 2152.12, the act is any violation listed in paragraph (1)(a), (b), (c), (d), (e), (f), or (g) above or would be any offense listed in any of those paragraphs if committed by an adult.

HISTORY

ACTION	DATE
Introduced	05-30-07

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