Lisa Sandberg *Legislative Service Commission*

Sub. H.B. 247

127th General Assembly
(As Passed by the House)

Reps. **Brown, Koziura, Chandler, Ujvagi, S. Williams, B. Williams, Yuko, Brady, Miller, DeGeeter, Otterman, Domenick, Luckie, Wagoner, Strahorn, Skindell, DeBose, J. McGregor, Driehaus, Hughes, Garrison, Combs, Schneider, Letson, Bacon, Batchelder, Beatty, Bolon, Book, Boyd, Budish, Celeste, Dodd, Dolan, Dyer, Evans, Fende, Foley, Gardner, Gibbs, Goodwin, Goyal, J. Hagan, R. Hagan, Harwood, Heard, Hottinger, Jones, Lundy, Mallory, Newcomb, Oelslager, Okey, J. Otterman, Patton, Schindel, Sears, Slesnick, Stebelton, D. Stewart, Szollosi, Widowfield, Yates**

BILL SUMMARY

- Permits any person who is 18 years of age or older to file a petition for a protection order on behalf of a child, upon the child's request.

- Requires a petition for a protection order against a respondent who is a minor to be filed in the juvenile division of the court of common pleas in the county in which the petitioner resides.

- 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, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, or a violation of a section of the Revised Code that is a sexually oriented offense 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 is a person with whom the respondent has or had a dating relationship, or the respondent was less than 18 years of age at the time of the alleged violation and is a person with whom the person to be protected has or had a dating relationship.

- Broadens the definition of the "immediate and present danger" needed for an *ex parte* menacing by stalking protection order.

- Expands the jurisdiction of the juvenile court to hear, determine, and enforce matters involving protection orders against a child.

- 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**). 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 the 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 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 court 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 petition 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 petition requesting a protection order for the child. Regardless of the age of the petitioner or the person to be protected, if the respondent is less than 18 years of age, any petition for a protection order must be filed in the juvenile division of the court of common pleas of the county in which the person to be protected resides. If the respondent is an adult, the petition must be filed in the court of common pleas of the county in which the party to be protected resides, and that court has exclusive original jurisdiction over the petition. (R.C. 2903.214(A)(1), (B), 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, and that the juvenile court retains all dispositionary powers consistent with existing Rules of Juvenile Procedure and may also exercise its discretion to adjudicate proceedings as provided in R.C. 2903.214 (menacing by stalking protection orders) or R.C. 3113.31 (domestic violence civil protection orders) in which the respondent is a child (R.C. 2151.23(A)(16) and (J)).

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 section of the Revised Code that is a sexually oriented offense 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" or the respondent was less than 18 years of age at the time of the alleged violation and is a person with whom the person to be protected has or had a "dating relationship" (R.C. 2903.214(C)(2)).

The bill defines "dating relationship" as a social relationship of a romantic or intimate nature. The existence of such a relationship must be determined based upon the following factors:

(1) The length of the relationship;

(2) The nature of the relationship;

(3) The frequency of interaction between the persons involved in the relationship;

(4) Any other factor the court considers relevant.

(R.C. 2903.214(A)(6).)

Existing law requires a court to consider whether the person to be protected is facing "immediate and present danger" when deciding whether to issue a temporary *ex parte* order. The bill expands the definition of "immediate and present danger" to include the following situations:

(1) The respondent has caused the person to be protected mental distress or caused the person to be protected to believe that the respondent will cause physical harm to that person;

(2) The respondent previously has been convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing 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), a violation of a section of the Revised Code that is a sexually oriented offense, 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(D)(1).)

The bill also expands the circumstances under which the court may require the petitioner to do, or refrain from doing, an act to include both of the following:

(1) Situations in which either the person to be protected or the respondent are less than 18 years of age, the two have had or have a dating relationship, and the person to be protected has committed 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 substantially similar municipal ordinance;

(2) Situations in which the person to be protected or the respondent is less than 18 years of age and the person to be protected is a victim of behavior, that was committed by the respondent, that is prohibited by R.C. 2903.211 (menacing by stalking) or a substantially similar municipal ordinance. (R.C. 2903.214(E)(3)(d).)

Under the bill, a respondent who files a separate petition for a protection order must file the petition in the following proper locations, regardless of the court in which the initial petition was filed:

(1) If the petitioner is a minor, the respondent must file the separate petition in the juvenile division of the court of common pleas of the county in which the respondent resides, and that court has exclusive original jurisdiction over the respondent's petition.

(2) If the petitioner is an adult, the respondent must file the separate petition in the court of common pleas of the county in which the respondent resides, and that court has exclusive original jurisdiction over the respondent's petition (R.C. 2903.214(E)(3)(a)).

Existing law states that a person who violates a menacing by stalking protection order may be subject to criminal prosecution or punishment for

contempt of court. The punishment of a person for contempt of court for violation of a protection order issued under this section does not bar criminal prosecution of the person. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction, and a person convicted of a violation of that section may not subsequently be punished for contempt of court arising out of the same activity.

The bill expands the punishment for contempt of court for violation of a menacing by stalking protection order to include a delinquent child proceeding, if the respondent is a minor (R.C. 2903.214(K)(2)).

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.[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;

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[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 (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.

(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 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)(a)(ii).)

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

The bill clarifies that nothing under the Domestic Violence Civil Protection Order Law prohibits the domestic relations division of a court of common pleas (in counties that have a domestic relations division) or a court of common pleas (in counties that do not have a domestic relations division) from designating a minor child as a protected party on a protection order (R.C. 3113.31(O)).

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 violations or offenses committed by a person, regardless of the person's age (R.C. 2950.01(A)):

(1) A violation of R.C. 2907.02 (rape), R.C. 2907.03 (sexual battery), R.C. 2907.05 (gross sexual imposition), R.C. 2907.06 (sexual imposition), R.C. 2907.07 (importuning), R.C. 2907.08 (voyeurism), R.C. 2907.21 (compelling prostitution), R.C. 2907.32 (pandering obscenity), R.C. 2907.321 (pandering obscenity involving a minor), R.C. 2907.322 (pandering sexually oriented matter involving a minor), or R.C. 2907.323 (illegal use of minor in nudity-oriented material or performance);

(2) A violation of R.C. 2907.04 (unlawful sexual conduct with a minor) when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of R.C. 2907.02, R.C. 2907.03, or R.C. 2907.04 or a violation of former R.C. 2907.12 (felonious sexual penetration);

(3) A violation of R.C. 2907.04 when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of R.C. 2907.02, R.C. 2907.03, or R.C. 2907.04 or a violation of former R.C. 2907.12;

(4) A violation of R.C. 2903.01 (aggravated murder), R.C. 2903.02 (murder), or R.C. 2903.11 (felonious assault) when the violation was committed with a sexual motivation;

(5) A violation of R.C. 2903.04(A) (involuntary manslaughter by causing the death of another or the unlawful termination of another's pregnancy as a proximate result of committing or attempting to commit a felony) when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(6) A violation of R.C. 2903.211(A)(3) (menacing by stalking if the victim of the offense is an officer or employee of a public children services agency or a private child placing agency);

(7) A violation of R.C. 2905.01(A)(1), (2), (3), or (5) (kidnapping) when the offense is committed with a sexual motivation;

(8) A violation of R.C. 2905.01(A)(4) (kidnapping with intent to engage in sexual activity against victim's will);

(9) A violation of R.C. 2905.01(B) (kidnapping involving the removal or restraint of the victim) when the victim of the offense is under 18 years of age and the offender is not a parent of the victim of the offense;

(10) A violation of R.C. 2905.02(B) (abduction with sexual motivation), R.C. 2905.03(B) (unlawful restraint with sexual motivation), R.C. 2905.05(B) (criminal child enticement with sexual motivation), R.C. 2919.22(B)(5) (endangering children committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child 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);

(11) A violation of any former Ohio law, 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 (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) above;

(12) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) above.

HISTORY

ACTION	DATE
Introduced	05-30-07
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