



Sub. H.B. 247*

127th General Assembly

(As Reported by S. Judiciary - Civil Justice)

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BILL SUMMARY

- Provides that the procedure for filing a protection order for the alleged commission of menacing by stalking or a sexually oriented offense applies to offenders who are 18 years of age or older.
- 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 a procedure in the Juvenile Law for seeking a protection order against a minor respondent pursuant to which a person alleges that (1) the respondent committed felonious assault, aggravated assault, aggravated menacing, menacing by stalking, or aggravated trespass, or a violation of a section of the Revised Code that is a sexually oriented offense against the person, and (2) the respondent was less than 18 years of age at the time of the alleged violation.

* This analysis was prepared before the report of the Senate Judiciary - Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Provides that a respondent who is less than 18 years of age is not entitled to court-appointed counsel in a proceeding regarding a protection order under the procedure discussed in the prior dot point.
- Includes violating a protection order obtained against a respondent who is under 18 years of age under the procedure discussed in the second prior dot point within the offense of violating a 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 orders

Existing 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 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).)

Operation of the bill

Existing procedure for obtaining protection order. The bill modifies the procedure for obtaining a protection order against a person who allegedly engaged

in menacing by stalking or a sexually oriented offense under R.C. 2903.214 (existing procedure described above in "Existing law") by requiring the petition for the protection order to allege that the respondent (person against whom the protection order is obtained) is 18 years of age or older. This change limits the existing procedure to respondents who are 18 years of age or older. (R.C. 2903.214(C)(1).)

New procedure for obtaining a protection order. The bill also creates a similar procedure for obtaining a protection order against a person who is under 18 years of age. The new procedure is the same structurally as the existing procedure but applies only to respondents who are under 18 years of age. The bill specifies that the petition for the protection order must contain or state (1) that the respondent (defined as a person who is under 18 years of age and against whom a petition is filed) engaged in a violation of R.C. 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), or 2911.211 (aggravated trespass) (see **COMMENT 2** to 6) against the person to be protected by the protection order 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, and (2) a request for relief under the new procedure. (R.C. 2151.34(A), (B), and (C)).

The bill also provides that a person who violates a protection order obtained under the new procedure is subject to, among other things, a delinquent child proceeding for violating the protection order (R.C. 2151.34(K)(1)(a)).

Juvenile court's exclusive jurisdiction over new protection order procedure. The bill specifies that the juvenile court has exclusive original jurisdiction to hear and determine petitions for a protection order and to enforce protection orders against a child under the new procedure described above and to enforce a protection order issued under that provision against a child for a period not to exceed five years or until the child is 21 years of age, whichever occurs first. The bill also specifies that, in exercising its exclusive original jurisdiction with respect to a proceeding brought under that provision in which the respondent is a child, the juvenile court retains all dispositional powers consistent with existing rules of juvenile procedure and may also exercise its discretion to adjudicate the proceedings, including the issuance of protection orders. (R.C. 2151.23(A)(16) and (J).)

Respondent not entitled to appointed counsel. The bill states that the respondent is not entitled to court-appointed counsel in the new procedures discussed above for protection orders obtained against a person under 18 years of age (R.C. 2151.34(N)).

Violating a protection order

Existing law prohibits, in part, a person from recklessly violating the terms of a menacing by stalking protection order or a protection order against a person who allegedly committed the offenses of felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, a violation of a municipal ordinance similar to assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, or a sexually oriented offense (R.C. 2919.27(A)(2)). A person who violates this provision is guilty of "violating a protection order," generally a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of a protection order, 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 consent agreement, or one or more violations of a protection order, "violating a protection order" is a felony of the fifth degree. (R.C. 2919.27(B).)

The bill prohibits a person from recklessly violating the terms of a protection order issued against a person who is under 18 years of age under the new procedure created by the bill. The penalty for violating this prohibition is the same as for violating the existing prohibition against violating the terms of a protection order. (R.C. 2919.27(A)(2) and (B).)

Inclusion of foster parents as victims under the domestic violence laws

The criminal offense of domestic violence

Existing law. Existing 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.

Operation of 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

Existing law. Under existing 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;

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.

(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 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.

Operation of 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. It gives juvenile courts exclusive, original jurisdiction to hear and determine petitions filed under this procedure and to enforce protection orders issued under this provision against persons under 18 years of age for a period not to exceed five years or until the child is 21 years of age, whichever occurs first. (R.C. 2151.23(A)(16) and (J) and 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

Existing 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.

Operation of 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

1. "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)):

(a) 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);

(b) 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);

(c) 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;

(d) 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;

(e) 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;

(f) 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);

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

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

(i) 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;

(j) 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);

(k) 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;

(l) 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.

2. A person commits "felonious assault" by doing any of the following:

(a) Knowingly causing serious physical harm to another or to another's unborn;

(b) Knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance;

(c) With knowledge that the person has tested positive as a carrier of a virus that causes AIDS, knowingly doing any of the following:

(i) Engaging in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(ii) Engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes AIDS;

(iii) Engaging in sexual conduct with a person under 18 years of age who is not the spouse of the offender.

3. A person commits "aggravated assault" if, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, knowingly causes serious physical harm to another or another's unborn or causes or attempts to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

4. A person commits "aggravated menacing" by knowingly causing another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family.

5. A person commits "menacing by stalking" by, as a result of engaging in a pattern of conduct, knowingly causing another person to believe that the offender will cause physical harm to the other person or cause mental distress to

the other person; through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, posts a message with purpose to urge or incite another to knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person; or violates the above-described provisions with a sexual motivation.

6. A person commits "aggravated trespass" by entering or remaining on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to the other person.

HISTORY

ACTION	DATE
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