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*Bill Analysis*  
Legislative Service Commission

## **S.B. 21**

127th General Assembly  
(As Introduced)

**Sens. Coughlin, Amstutz**

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### **BILL SUMMARY**

- Adopts the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act.

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### **CONTENT AND OPERATION**

#### **Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act**

The bill adopts the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, in R.C. 2919.31 to 2919.39 (R.C. 2919.31).

#### **Enforcement of a valid foreign protection order in an Ohio court**

The bill specifies that a person authorized by the laws of Ohio to seek enforcement of a "civil protection order" or "temporary protection order" may seek enforcement of a valid "foreign protection order" in an Ohio court (see "Definitions," below, for definitions of the terms in quotation marks; see **COMMENT 1** regarding enforcement of an Ohio protection order). The court must enforce the terms of the order, including any terms that provide relief that an Ohio court would lack power to provide but for this section. The court must enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court must follow the procedures of Ohio for the enforcement of civil protection orders or temporary protection orders.

An Ohio court may not enforce a foreign protection order issued by a "tribunal" of a "state" that does not recognize the standing of a "protected individual" to seek enforcement of the order. An Ohio court must enforce the provisions of a valid foreign protection order that govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the "issuing state."

A foreign protection order is "valid" for purposes of the provisions described above if it meets all of the following criteria: (1) it identifies the protected individual and the "respondent," (2) it is currently in effect, (3) it was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state, and (4) it was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order, or, in the case of an order *ex parte*, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued and in a manner consistent with the right of the respondent to due process. A foreign protection order valid on its face is *prima facie* evidence of its validity. The absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

An Ohio court may enforce provisions of a "mutual foreign protection order" that favor a respondent only if the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state and the tribunal of the issuing state made specific findings in favor of the respondent. (R.C. 2919.33.)

**Enforcement of a valid foreign protection order by a law enforcement officer**

The bill provides that an officer of a law enforcement agency, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, must enforce the order as if it were the order of an Ohio court (see **COMMENT 1**). Presentation of a foreign protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of the provisions described in this part of this analysis, the foreign protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a foreign protection order is not required for enforcement. If a foreign protection order is not presented, an officer of a law enforcement agency may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

If an officer of a law enforcement agency determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer must inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

Registration or filing of an order in Ohio is not required for the enforcement of a valid foreign protection order pursuant to the provisions described in this part of this analysis. (R.C. 2919.34.)

### **Registration of a foreign protection order**

The bill specifies that a foreign protection order may be registered in the same manner as a protection order issued by a court of another state under R.C. 2919.272 (R.C. 2919.35; see **COMMENT 2**, regarding registration under R.C. 2919.272 of a protection order issued by a court of another state).

### **Qualified immunity**

Under the bill, the state of Ohio, an Ohio political subdivision, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with the bill's provisions described above (R.C. 2919.36).

### **Pursuit of other remedies**

The bill specifies that a protected individual who pursues remedies under the bill's provisions described above is not precluded from pursuing other legal or equitable remedies against the respondent (R.C. 2919.37).

### **Application and construction of act**

The bill provides that, in applying and construing the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, a court is required to consider the need to promote uniformity of the law with respect to its subject matter among states that enact it. (R.C. 2919.38).

It specifies that the provisions of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act apply to foreign protection orders issued before the bill's effective date and to continuing actions for enforcement of foreign protection orders commenced before that bill's effective date. A request for enforcement of a foreign protection order made on or after the bill's effective date for violations of a foreign protection order occurring before that effective date is governed by those sections (R.C. 2919.39).

### Definitions

The bill provides the following definitions, for purposes of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (R.C. 2919.32):

(1) "Civil protection order" means a protection order issued or consent agreement approved under R.C. 2903.214 or 3113.31 (see **COMMENT 4**) and "temporary protection order" means a protection order issued under R.C. 2903.231 or 2919.26 (see **COMMENT 3**) (by reference to existing R.C. 2923.124, not in the bill).

(2) "Foreign protection order" means either of the following: (a) a protection order issued by a court of another state (see paragraph (6), below), or (b) any other injunction or order that is issued by a tribunal of another state under the domestic-violence, family-violence, or anti-stalking laws of the issuing state to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.

(3) "Issuing state" means the state whose tribunal (see below) issues a protection order.

(4) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(5) "Protected individual" means an individual protected by a protection order.

(6) "Protection order issued by a court of another state" has the same meaning as in existing R.C. 2919.27, as described in "Existing law" under "Offense of 'violating a protection order'."

(7) "Respondent" means the individual against whom enforcement of a protection order is sought.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States and includes an Indian tribe or band that has jurisdiction to issue protection orders.

(9) "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

## Offense of "violating a protection order"

### Existing law

Existing law prohibits a person from recklessly violating the terms of any of the following: (1) a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or 3113.31 (see **COMMENT 3**), (2) a protection order issued pursuant to R.C. 2903.213 or 2903.214 (see **COMMENT 4**), or (3) a "protection order issued by a court of another state" (see below).

It is an affirmative defense to a charge of a violation of the prohibition under clause (3) of the preceding paragraph that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. 2265(b) for a protection order that must be accorded full faith and credit by an Ohio court or that it is not entitled to full faith and credit under 18 U.S.C. 2265(c).

A violation of the prohibition is the offense of "violating a protection order." Violating a protection order generally is a misdemeanor of the first degree, but it is a felony of the fifth degree if the offender previously has been convicted of a violation of a protection order issued pursuant to R.C. 2903.213 or 2903.214, two or more violations of R.C. 2903.21, 2903.211, 2903.22, or 2911.211 that involved the same person who is the subject of the protection order or consent agreement, or one or more offenses of violating a protection order, and it is a felony of the third degree if the offender violates a protection order or consent agreement while committing a felony offense.

As used in the provisions described above, "protection order issued by a court of another state" means an injunction or another order issued by a criminal court of a state other than Ohio for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person, including a temporary order, and means an injunction or order of that nature issued by a civil court of a state other than Ohio, including a temporary order and a final order issued in an independent action or as a pendente lite order in a proceeding for other relief, if the court issued it in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection. "Protection order issued by a court of another state" does not include an order for support or for custody of a child issued pursuant to the divorce and child custody laws of another state, except to the extent that the order for support or for custody of a child is entitled to full faith and credit under the laws of the United States. (R.C. 2919.27.)

### Operation of the bill

The bill modifies the prohibition that constitutes the offense of "violating a protection order" so that the portion of the offense that currently refers to a protection order issued by a court of another state instead refers to *a foreign protection order, including but not limited to a protection order issued by a court of another state*. Specifically, under the bill, the prohibition prohibits a person from recklessly violating the terms of any of the following: (1) a protection order issued or consent agreement approved pursuant to R.C. 2919.26 or 3113.31 (existing law), (2) a protection order issued pursuant to R.C. 2903.213 or 2903.214 (existing law), or (3) *a foreign protection order, including but not limited to a protection order issued by a court of another state* (modified by the bill). Under the bill, for purposes of this provision, "foreign protection order" has the same meaning as is described above in "Definitions" under "Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act." (R.C. 2919.27.)

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### COMMENT

1. Existing R.C. 2919.26, not in the bill, provides that, when a temporary protection order is issued under its provisions (see **COMMENT 3**, below), a copy of the order must be issued by the court to the complainant, to the alleged victim, to the person who requested the order, to the defendant, and to all law enforcement agencies with jurisdiction to enforce the order. The court must direct that a copy of the order be delivered to the defendant on the same day that the order is entered. All law enforcement agencies are required to establish and maintain an index for the temporary protection orders delivered to them under this provision. With respect to each order delivered, each agency must note on the index the date and time of the receipt of the order by the agency. A complainant, alleged victim, or other person who obtains a temporary protection order under R.C. 2919.26 may provide notice of the issuance of the order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering that order in the other county in accordance with R.C. 3113.31 (see below) regarding civil protection orders and consent agreements and filing a copy of the registered protection order with a law enforcement agency in the other county in accordance with that provision. Any officer of a law enforcement agency must enforce a temporary protection order issued by any court in Ohio in accordance with the provisions of the order, including removing the defendant from the premises, regardless of whether the order is registered in the county in which the officer's agency has jurisdiction as described in this paragraph. Upon a violation of a temporary protection order, the court may issue another temporary protection order, as a pretrial condition of release, that modifies the terms of the order that was violated.

Existing R.C. 3113.31, not in the bill, provides that, when a civil protection order is issued or a consent agreement is approved under its provisions (see **COMMENT 3**), a copy of the order or agreement must be issued by the court to the petitioner, to the respondent, and to all law enforcement agencies with jurisdiction to enforce the order or agreement. The court shall direct that a copy of an order be delivered to the respondent on the same day that the order is entered. All law enforcement agencies are required to establish and maintain an index for the protection orders and the approved consent agreements delivered to the agencies pursuant to this provision. With respect to each order and consent agreement delivered, each agency must note on the index the date and time that it received the order or consent agreement. Regardless of whether the petitioner has registered the order or agreement in the county in which the officer's agency has jurisdiction in the manner described below, any officer of a law enforcement agency must enforce a protection order issued or consent agreement approved by any court in Ohio in accordance with the provisions of the order or agreement, including removing the respondent from the premises, if appropriate.

Additionally, R.C. 3113.31 provides that a petitioner who obtains a civil protection order or consent agreement under its provisions or a temporary protection order under R.C. 2919.26, as described above, may provide notice of the issuance or approval of the order or agreement to the judicial and law enforcement officials in any county other than the county in which the order is issued or the agreement is approved by registering that order or agreement in the other county, in the manner described below, and filing a copy of the registered order or registered agreement with a law enforcement agency in the other county. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county in the manner described in **COMMENT 2** and filing a copy of the registered order with a law enforcement agency in that county. A petitioner may register a temporary protection order, protection order, or consent agreement in a county other than the county in which the court that issued the order or approved the agreement is located in the following manner: (a) the petitioner must obtain a certified copy of the order or agreement from the clerk of the court that issued the order or approved the agreement and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order or agreement is to be registered, and (b) upon accepting the certified copy of the order or agreement for registration, the clerk of the court of common pleas, municipal court, or county court must place an endorsement of registration on the order or agreement and give the petitioner a copy of the order or agreement that bears that proof of registration. The clerk of each court of common pleas, the clerk of each municipal court, and the clerk of each county court are required to maintain a registry of certified copies of temporary protection

orders, protection orders, or consent agreements that have been issued or approved by courts in other counties and that have been registered with the clerk.

Existing R.C. 3113.31 also provides that a person who violates a civil protection order issued or a consent agreement approved under its provisions is subject to the following sanctions: (a) criminal prosecution for a violation of R.C. 2919.27, if the violation of the protection order or consent agreement constitutes a violation of that section, or (b) punishment for contempt of court. The punishment of a person for contempt of court for violation of a civil protection order or consent agreement approved does not bar criminal prosecution of the person for a violation of R.C. 2919.27. However, a person punished for contempt of court is entitled to credit for the punishment imposed upon conviction of a violation of that section, and a person convicted of a violation of that section cannot subsequently be punished for contempt of court arising out of the same activity.

R.C. 2903.213 and 2903.214 contain similar enforcement mechanisms regarding protection orders issued under their provisions (see **COMMENT 4**).

2. Existing R.C. 2919.272, not in the bill, provides that a person who has obtained a "protection order issued by a court of another state" (see below) may provide notice of the issuance of the order to judicial and law enforcement officials in any Ohio county by registering the order in that county and filing a copy of the registered order with a law enforcement agency in that county. To register the order, the person is required to obtain a certified copy of the order from the clerk of the court that issued the order and present that certified copy to the clerk of the court of common pleas or the clerk of a municipal court or county court in the county in which the order is to be registered. Upon accepting the certified copy of the order for registration, the clerk must place an endorsement of registration on the order and give the person a copy of the order that bears proof of registration. The person then may file with a law enforcement agency in that county a copy of the order that bears proof of registration. The clerk of each court of common pleas and the clerk of each municipal court and county court are required to maintain a registry of certified copies of protection orders issued by courts of another state that have been registered with the clerk. Each law enforcement agency is required to establish and maintain a registry for protection orders delivered to the agency pursuant to this section. The agency must note in the registry the date and time that the agency received an order. An officer of a law enforcement agency must enforce a protection order issued by a court of another state in accordance with the provisions of the order, including removing the person allegedly violating the order from the premises, regardless of whether the order is registered in the county in which the officer's agency has jurisdiction. As used in these provisions, "protection order issued by a court of another state" has the same meaning as in R.C. 2919.27, as described in **Existing law** under

**"Offense of 'violating a protection order'"** in the **CONTENT AND OPERATION** portion of this analysis.

3. Existing R.C. 2919.26, not in the bill, provides for the issuance of a temporary protection order after the filing of a complaint that alleges a violation of R.C. 2909.06 (the offense of "criminal damaging or endangering"), 2909.07 ("criminal mischief"), 2911.12 ("burglary"), or 2911.211 ("aggravated trespass") if the alleged victim of the violation was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, or any "offense of violence" if the alleged victim of the offense was a family or household member at the time of the violation (as defined in existing R.C. 2901.01, not in the bill; over 30 offenses are specified as offenses of violence, including the offense of "domestic violence"). Existing R.C. 3113.31, not in the bill, provides for the issuance of a civil protection order, or the approval of a consent agreement, based upon an allegation of another person's engaging in domestic violence against a family or household member of that other person.

4. Existing R.C. 2903.213, not in the bill, provides for the issuance of a protection order upon the filing of a complaint that does not involve a family or household member and that alleges a violation of R.C. 2903.11 (the offense of "felonious assault"), 2903.12 ("aggravated assault"), 2903.13 ("assault"), 2903.21 ("aggravated menacing"), 2903.211 ("menacing by stalking"), 2903.22 ("menacing"), or 2911.211 ("aggravated trespass") or a violation of a municipal ordinance substantially similar to R.C. 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211. Existing R.C. 2903.214, not in the bill, provides for the issuance of a civil protection order based upon an allegation of another person's violation of R.C. 2903.211.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-20-07

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