



# Ohio Legislative Service Commission

## Bill Analysis

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### S.B. 261

130th General Assembly  
(As Introduced)

**Sens.** Bacon and Manning, Patton, Obhof, Seitz, Brown

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## BILL SUMMARY

- Provides that, upon the issuance of a juvenile court protection order, a civil stalking protection order involving any person, or a civil domestic violence protection order involving a family or household member, the clerk of court must provide a copy of the order to the appropriate law enforcement agency for entry into the National Crime Information Center Protection Order File.
- Provides that if a person recklessly violates a criminal domestic violence temporary protection order involving a family or household member, a civil domestic violence protection order involving a family or household member based on an allegation of domestic violence, or a civil stalking protection order involving any person, the protection order "has been issued" for purposes of the offense of "violating a protection order" if the person has been served with a copy of the order or has actual notice that the court has issued the order.
- Expands the circumstances in which the offense of "violating a protection order" is expressly classified as a fifth degree felony.

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## CONTENT AND OPERATION

### Introduction

Existing law provides mechanisms for the issuance of several different types of protection orders. The types of orders and the circumstances in which they may be issued are described below in "**Types of protection orders.**" This analysis uses a shorthand method of referring to each of those protection orders that is based on the court that issues the order or the main context in which the order may be issued. Under that shorthand method, references in this analysis to a "juvenile court protection order,"

a "criminal stalking protection order involving a person other than a family or household member," a "civil stalking protection order involving any person," a "criminal domestic violence temporary protection order involving a family or household member," or a "civil domestic violence protection order involving a family or household member" mean that type of order as described below in the corresponding subheading under "**Types of protection orders.**"

## **Juvenile court and civil protection orders – copy to law enforcement agencies for entry into the National Crime Information Center Protection Order File.**

The bill provides that, upon the issuance of a juvenile court protection order, a civil stalking protection order involving any person, or a civil domestic violence protection order involving a family or household member, the clerk of court must provide a copy of the order to the appropriate law enforcement agency for entry into the National Crime Information Center Protection Order File (see "**National Crime Information Center Protection Order File background,**" below).<sup>1</sup> These provisions do not apply with respect to criminal stalking protection orders involving a person other than a family or household member or criminal domestic violence temporary protection orders involving a family or household member.

### **Offense of "violating a protection order"**

The bill expands the circumstances in which the offense of violating a protection order applies to a person by stating that a protection order has been issued if the person has notice of the order, even if the order has not yet been served on the person. In *State v. Smith* (2013), 136 Ohio St. 1, the Ohio Supreme Court held that a person could not be convicted of the offense of "violating a protection order" based on the person's reckless violation of a violation of a civil stalking protection order involving any person (ordered by a court under R.C. 2903.214) unless the order had been "served" on the person before the alleged violation. The Court determined that R.C. 2903.214 requires that the order be served on the person to whom it applies and that the prohibition in the offense of "violating a protection order" incorporates that requirement as an element of the offense.

### **Prohibition**

Existing law prohibits a person from recklessly violating the terms of a criminal domestic violence temporary protection order involving a family or household member, a civil domestic violence protection order involving a family or household member, a

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<sup>1</sup> R.C. 2151.34(F)(1)(b), 2903.214(F)(1)(b), and 3113.31(F)(1)(b).



juvenile court protection order, a criminal stalking protection order involving a person other than a family or household member, and a civil stalking protection order involving any person, or a "protection order issued by a court of another state" (see "**Types of protection orders,**" below). A violation of the prohibition is the offense of "violating a protection order."<sup>2</sup>

The bill adds language that specifies that, for purposes of the portion of the prohibition that pertains to a criminal domestic violence temporary protection order involving a family or household member or a civil domestic violence protection order involving a family or household member based on an allegation of domestic violence, the protection order has been issued if the person has been served with a copy of the protection order or has actual notice that the court has issued the protection order.<sup>3</sup>

The bill also relocates the portion of the prohibition that pertains to a civil stalking protection order involving any person and adds language that specifies that, for purposes of that relocated portion, a protection order has been issued if the person has been served with a copy of the protection order or has actual notice that the court has issued the protection order.<sup>4</sup>

## **Penalty**

The bill expands the circumstances in which "violating a protection order" is a fifth degree felony. Under the bill, in addition to the current law circumstances in which the offense is a fifth degree felony, it also is expressly classified as a fifth degree felony if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for: (1) a violation of a civil domestic violence protection order involving a family or household member, (2) a violation of a consent agreement establishing a juvenile court protection order, a criminal stalking protection order involving a person other than a family or household member, a civil stalking protection order involving any person, or a civil domestic violence protection order involving a family or household member (note that only the last of those types of orders expressly provides for consent agreements), or (3) any combination of violations of the offenses of aggravated menacing, menacing by stalking, menacing, or aggravated trespass.<sup>5</sup> Note that the circumstances identified in clauses (1) and (2) of this paragraph appear to be covered under existing law.

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<sup>2</sup> R.C. 2919.27(A), (B)(1), and (C).

<sup>3</sup> R.C. 2919.27(D).

<sup>4</sup> R.C. 2919.27(A)(2), (A)(4), and (E).

<sup>5</sup> R.C. 2919.27(B)(3).



Under existing law, "violating a protection order" generally is a misdemeanor of the first degree, but it is a felony of the third or fifth degree in specified circumstances. The offense is a felony of the fifth degree if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for: (1) a violation of a juvenile court protection order, a criminal stalking protection order involving a person other than a family or household member, or a civil stalking protection order involving any person, (2) two or more offenses 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 (3) one or more offenses of violating a protection order. The offense is a third degree felony if the offender violates a protection order or consent agreement while committing a felony offense. Existing law also authorizes the court to require electronic monitoring of the offender for a period not exceeding five years by a law enforcement agency designated by the court.<sup>6</sup>

## **Types of protection orders**

Existing law provides mechanisms for the issuance of several different types of protection orders. Except for the addition of the requirements regarding the provision of copies of orders to law enforcement agencies described above, the bill does not change any of the mechanisms. Existing law also defines for specified purposes a "protection order issued by a court of another state." The existing mechanisms, and the existing definition, are described below:

### **Juvenile court protection order**

Existing law provides a mechanism under which a person may obtain a protection order from a juvenile court against a person under 18 years of age who allegedly has committed felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, committed a sexually oriented offense as defined in the SORN Law, or engaged in a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the order. A person may seek such an order on his or her own behalf, a parent or adult family or household member may seek such an order on behalf of any other family or household member, and a person whom the court determines is an appropriate person to seek relief may seek such an order on behalf of any child.<sup>7</sup> Any

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<sup>6</sup> R.C. 2919.27(B)(2) to (5).

<sup>7</sup> R.C. 2151.34.



proceeding under the mechanism must be conducted in accordance with the Rules of Civil Procedure, except that bond does not have to be required.<sup>8</sup>

### **Civil stalking protection order involving any person**

Existing law provides a mechanism under which a person may obtain a civil protection order against a person 18 years of age or older who allegedly has committed menacing by stalking or a sexually oriented offense against the person to be protected by the order. A person may seek such an order on his or her own behalf and a parent or adult household member may seek such an order on behalf of any other family or household member.<sup>9</sup> Any proceeding under the mechanism must be conducted in accordance with the Rules of Civil Procedure, except that bond does not have to be required.<sup>10</sup>

### **Civil domestic violence protection order involving a family or household member**

Existing law provides a mechanism under which a person may obtain a civil protection order against a person who allegedly has engaged in domestic violence (defined to include an act generally thought of as domestic violence and also any sexually oriented offense as defined in the SORN Law) against a specified family or household member who is to be protected under the order. A person may seek such an order on his or her own behalf and a parent or adult household member may seek such an order on behalf of any other family or household member. The mechanism also provides for court approval of a consent agreement.<sup>11</sup> Any proceeding under the mechanism must be conducted in accordance with the Rules of Civil Procedure, except that bond does not have to be required.<sup>12</sup>

### **Criminal stalking protection order involving a person other than a family or household member**

Existing law provides a mechanism under which a person may obtain a criminal protection order against a person who has been charged with felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, a violation of any municipal ordinance that is substantially

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<sup>8</sup> R.C. 2151.34(G).

<sup>9</sup> R.C. 2903.214.

<sup>10</sup> R.C. 2903.214(G).

<sup>11</sup> R.C. 3113.31.

<sup>12</sup> R.C. 3113.31(G).

equivalent to the offense of assault, aggravated menacing, menacing by stalking, or aggravated trespass or a sexually oriented offense against a victim who is not a family or household member of the offender. The alleged victim may seek such an order on his or her own behalf or a family or household member of an alleged victim may seek such an order on behalf of the victim, and a court may issue such an order on its own motion.<sup>13</sup>

### **Criminal domestic violence temporary protection order involving a family or household member**

Existing law provides a mechanism under which a person may obtain a criminal temporary protection order against a person who has been charged with committing criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass, a violation of any municipal ordinance that is substantially similar to any of those offenses, an offense of violence, or a sexually oriented offense against an alleged victim who was a family or household member at the time of the commission of the offense. The alleged victim may seek such an order on his or her own behalf or the complainant or a family or household member of an alleged victim may seek such an order on behalf of the victim, and a court may issue such an order on its own motion.<sup>14</sup>

### **Delivery or issuance of order**

If a court issues an order under any of the mechanisms described above, it must deliver or issue a copy of the order to the petitioner or complainant, to the alleged victim and the person who requested the order if it is a criminal order, to the respondent or defendant, and to all law enforcement agencies with jurisdiction to enforce the order. The court must direct that the delivery to the respondent or defendant be on the same day that the order is entered.<sup>15</sup>

### **Protection order issued by a court of another state**

As used in R.C. 2919.27, "protection order issued by a court of another state" means an injunction or another order issued by a criminal court of another state 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 another state, 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

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<sup>13</sup> R.C. 2903.213, not in the bill.

<sup>14</sup> R.C. 2919.26, not in the bill.

<sup>15</sup> R.C. 2151.34(F)(1), 2903.214(F)(1), and 3113.31(F)(1); R.C. 2903.213(G) and 2919.26(G), not in the bill.



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.<sup>16</sup>

## **National Crime Information Center Protection Order File background**

The National Crime Information Center (NCIC) is a computerized index of criminal justice information maintained by the FBI. According to information about the NCIC on the FBI's website, the NCIC is available to federal, state, and local law enforcement and other criminal justice agencies and is operational 24 hours a day, 365 days a year. The purpose for maintaining the NCIC is to provide a computerized database for ready access by a criminal justice agency making an inquiry and for prompt disclosure of information in the system from other criminal justice agencies about crimes and criminals. The information is to assist authorized agencies in criminal justice and related law enforcement objectives, such as apprehending fugitives, locating missing persons, locating and returning stolen property, as well as in the protection of the law enforcement officers encountering the individuals described in the system. All records in NCIC are protected from unauthorized access through administrative, physical, and technical safeguards, including restricting access to those with a need to know to perform their official duties, and using locks, alarm devices, passwords, and/or encrypting data communications. Data contained in NCIC is provided by the FBI, federal, state, local, and foreign criminal justice agencies, and authorized courts.<sup>17</sup> The NCIC database currently consists of 21 files, one of which is the Protection Order File.<sup>18</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	01-02-14

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<sup>16</sup> R.C. 2919.27(F).

<sup>17</sup> <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.

<sup>18</sup> <http://www.fbi.gov/about-us/cjis/ncic>.

