Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 261

130th General Assembly
(As Passed by the Senate)

Sens. Bacon and Manning, Patton, Obhof, Seitz, Brown, Balderson, Beagle, Burke, Eklund, Hite, Hughes, Jones, LaRose, Oelslager, Sawyer, Tavares

BILL SUMMARY

- Provides that if a person is charged with violating a criminal domestic violence temporary protection order involving a family or household member, a civil domestic violence protection order (or consent agreement) involving a family or household member, 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 protection order issued by a court of another state, service of the protection order (or consent agreement) on the person is not required to prove the violation under the offense of "violating a protection order" if the prosecution proves that the person had actual notice that there was a protection order (or consent agreement) and proves that the person recklessly violated the terms of the order (or agreement).

- Declares that the General Assembly's intent in enacting its provision described in the preceding dot point is to supersede the holding of the Ohio Supreme Court in *State v. Smith* (2013), 136 Ohio St.3d 1, so that unperfected service of a protection order (or consent agreement) does not preclude a prosecution under the offense of "violating a protection order."

- Expands the circumstances in which the offense of "violating a protection order" is expressly classified as a fifth degree felony.

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 (or consent agreement) involving a family or household member" mean that type of order as described below in the corresponding subheading under "**Types of protection orders**."

Offense of "violating a protection order"

Summary

The bill expands the circumstances in which the offense of "violating a protection order" applies to a person by stating service of a protection order (or consent agreement) is not required to prove a violation under the offense if the prosecution proves the person's actual notice of the order (or agreement) and the person's reckless violation of its terms.

In *State v. Smith* (2013), 136 Ohio St.3d 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. The bill includes a provision that declares that the General Assembly's intent in making the change described above is to supersede this holding of the Ohio Supreme Court in *Smith* so that unperfected service of a protection order (or consent agreement) does not preclude a prosecution under the offense of violating a protection order.[1]

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 (or consent agreement) involving a family or household member, a juvenile court protection order, a criminal stalking protection order involving a person other than a family or household member, a civil stalking

[1] Section 3 of the bill.

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."[2]

The bill adds language that specifies that if a person is charged with a violation of the prohibition, service of the protection order (or consent agreement) on the person is not required to prove the violation if the prosecution proves that the person had actual notice that there was a protection order (or consent agreement) and proves that the person recklessly violated the terms of the order (or agreement).[3]

Penalty

The bill expands the circumstances in which "violating a protection order" is expressly classified as 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.[4] Note that the circumstances identified in clauses (1) and (2) of this paragraph appear to be covered as fifth degree felonies under the provision of existing law described in clause (3) of the next paragraph.

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

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[2] R.C. 2919.27(A) and (B)(1).

[3] R.C. 2919.27(D).

[4] R.C. 2919.27(B)(3).

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.[5]

Types of protection orders

Existing law provides mechanisms for the issuance of several different types of protection orders. 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.[6] 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.[7]

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 on 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.[8] Any proceeding under the mechanism must be conducted in

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[5] R.C. 2919.27(B)(2) to (5).

[6] R.C. 2151.34, not in the bill.

[7] R.C. 2151.34(G), not in the bill.

[8] R.C. 2903.214, not in the bill.

accordance with the Rules of Civil Procedure, except that bond does not have to be required.[9]

Civil domestic violence protection order (or consent agreement) 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.[10] 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.[11]

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 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.[12]

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

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[9] R.C. 2903.214(G), not in the bill.

[10] R.C. 3113.31, not in the bill.

[11] R.C. 3113.31(G), not in the bill.

[12] R.C. 2903.213, not in the bill.

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.[13]

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.[14]

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 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.[15]

HISTORY

ACTION	DATE
Introduced	01-02-14
Reported, S. Criminal Justice	03-11-14
Passed Senate (32-0)	03-12-14

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[13] R.C. 2919.26, not in the bill.

[14] R.C. 2151.34(F)(1), 2903.213(G), 2903.214(F)(1), 2919.26(G), and 3113.31(F)(1), not in the bill.

[15] R.C. 2919.27(F).