



Ohio Legislative Service Commission 122nd Senate Bill Analysis

Sub. S.B. 1** This analysis was prepared before the report of the Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

122nd General Assembly
(As Reported by S. Judiciary)

Sens. Kearns, Dix, Oelslager, B. Johnson, McLin, Sheerer, Sweeney, White

- Modifies the definition of "family or household member" that applies to the offense of domestic violence, the issuance of domestic violence temporary protection orders (TPOs) and domestic violence civil protection orders and consent agreement (CPOs), and the funding of shelters for victims of domestic violence.
- Extends the definition of "person living as a spouse" that applies to that offense, those orders, and that funding to "look back" five years, instead of one year, to determine whether the requisite relationship existed.
- Specifies that, if a court issues a TPO or CPO that bars the alleged offender from entering the residence, school, business, or place of employment of the complainant or family or household member, the order or agreement must state clearly that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant or family or household member to enter any of the specified places or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant or family or household member.
- Specifies that the provision described in the preceding paragraph does not limit any discretion of a court to determine that an alleged offender charged with the offense of "violating a protection order," with a violation of a municipal ordinance substantially equivalent to that offense, or with contempt of court, which charge is based on an alleged violation of a TPO or CPO, did not commit the violation or was not in contempt of court.
- Modifies the provision that requires a court that issues an *ex parte* CPO to hold a full hearing within a specified period of time to instead require the court to schedule the hearing for a date within that specified period and, subject to a possible continuance for a specified reason, to hold it on the date scheduled.
- Specifies that an *ex parte* CPO does not expire because of a failure to serve notice upon the respondent before the date set for the full hearing or because the court grants a continuance under the bill.
- Specifies that an order that is issued under the law governing domestic violence CPOs, other than an *ex parte* order, and that grants, approves, or refuses to grant or approve, a protection order or consent agreement, is a final appealable order.
- Increases from two years to five years the maximum duration after the date of issuance of CPOs.
- Generally requires the enforcement in Ohio of a protection order issued by another state that is similar in function to a TPO, a CPO, or an anti-stalking protection order issued in Ohio and provides a mechanism to assist in the enforcement of such an order.

- Grants municipal courts and county courts original jurisdiction within their territories in any action concerning the enforcement of protection orders issued by another state.
- Expands the offense of "violating a protection order or consent agreement or anti-stalking protection order" to also prohibit a person from recklessly violating the terms of a "protection order issued by a court of another state" and renames the offense as "violating a protection order."
- Extends the state's "preferred arrest" policy that currently applies regarding the warrantless arrest of a person by a peace officer who has reasonable ground to believe the person committed the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" based upon a TPO or CPO violation so that it applies to the offense of "domestic violence" and the offense of "violating a protection order" based upon a violation of a TPO, a CPO, an anti-stalking protection order, or a protection order issued by a court of another state.
- Modifies the provisions that currently require each law enforcement agency or governmental entity that employs a peace officer who is subject to the state's "preferred arrest" policy described in the preceding paragraph to adopt a written domestic violence policy and procedures to: require the policy and procedures to apply regarding the offense of "domestic violence" and the offense of "violating a protection order" based upon a violation of a TPO, a CPO, an anti-stalking protection order, or a protection order issued by a court of another state; and conform certain provisions that must be included in the policy and procedures relative to mandatory arrests for acts that constitute "felonious assault" or "aggravated assault" to recent changes in the elements of those offenses.
- Provides a new immunity pursuant to which a peace officer who arrests an offender for the offense of violating a protection order with respect to a protection order or consent agreement of Ohio or another state that on its face is valid is immune from liability in a civil action for damages for injury, death, or loss to person or property allegedly caused by or related to the offense to the same extent as is provided under the existing State Officer or Employee Immunity Law or the existing Political Subdivision Employee Immunity Law.
- Specifies that each agency, instrumentality, or political subdivision that is required to adopt a written domestic violence response policy and that arrests an offender for an alleged incident of the offense of domestic violence or violating a protection order must consider referring the case to federal authorities for prosecution under federal law if the incident constitutes a violation of federal law.
- Removes from mayor's courts jurisdiction over domestic violence cases, over similar assault-related or menacing-related cases involving family or household members, and over the issuance of domestic violence temporary protection orders.
- Confirms the "look-back" period for determining mayor's court OMVI jurisdiction to the "look-back" period for determining the penalty for state OMVI as it was amended by Am. Sub. S.B. 166 of the 121st General Assembly.
- Expands the provisions pertaining to mental evaluations of persons charged with "violating a protection order" and the special bail provisions applicable regarding that offense to also apply regarding a violation of a protection order issued by a court of another state.

CONTENT AND OPERATION

Offense of domestic violence

Existing law

The existing offense of domestic violence prohibits a person from doing any of the following: (1) knowingly causing or attempting to cause physical harm to a "family or household member" (see below), (2) recklessly causing serious physical harm to a family or household member, or (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 the first or second prohibition is a misdemeanor of the first degree or, if the offender previously was convicted of violating any of the prohibitions or any other of a list of specified offenses, a felony of the fifth degree. A violation of the third prohibition is a misdemeanor of the fourth degree or, if the offender previously was convicted of violating any of the prohibitions or any other of a list of specified offenses, a misdemeanor of the third degree. (Sec. 2919.25(A) to (D).)

For purposes of the offense, and for purposes of the temporary protection order provisions described below in "**Domestic violence temporary protection orders**" (sec. 2919.25(E)):

(1) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the offender: (i) a spouse, a "person living as a spouse" (see (2), below), or a former spouse of the offender, (ii) a parent or child of the offender, or another person related by consanguinity or affinity to the offender, or (iii) a parent or a child of a spouse, person living as a spouse, or 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;

(b) The *natural parent* of any child of whom the offender is the other natural parent.

(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender *within one year* prior to the date of the alleged commission of the act in question.

Operation of the bill

The bill modifies the existing definitions of "family or household member" and "person living as a spouse" that apply to the offense of domestic violence and the temporary protection order provisions. The bill retains the portion of the existing definition of "family or household member" described above in paragraph (1)(a) but modifies the portion described above in paragraph (1)(b) to refer to "the *natural parent* of any child of whom the offender *is, or is alleged to be, the other natural parent.*" The bill modifies the definition of "person living as a spouse" so that it means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender *within five years* (instead of *within one year*) prior to the date of the alleged commission of the act in question. (Sec. 2919.25(E).)

Domestic violence temporary protection orders

Existing law

Under existing law, upon the filing of a criminal complaint that alleges the commission of the offense of domestic violence, a violation of a municipal ordinance substantially similar to domestic violence, the offense of felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass that involves a family or household member, or a violation of a municipal ordinance substantially similar to any of those offenses that involves a family or household member, the complainant or another specified person may file with the clerk of the court that has jurisdiction over the case a motion requesting the issuance of a temporary protection order (hereafter, a TPO) as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. Upon the filing of such a motion, upon compliance with specified hearing procedures and other procedures, and upon finding that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender, the court may issue a TPO, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant or family or household member, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or family or household member. The court also may issue a TPO upon its own motion. (Sec. 2919.26(A) to (D).)

A TPO is effective only until the disposition of the criminal proceeding arising out of the complaint upon which it is based, or the issuance of a civil protection order or consent. The court must provide a copy of any TPO it issues to the complainant, the defendant, and all law enforcement agencies with jurisdiction to enforce the order. Every law enforcement agency must maintain an index of TPOs delivered to it. A complainant who obtains a TPO may register it in any county in the state, pursuant to a specified procedure, but, regardless of whether the TPO is registered in the county in which the officer's agency has jurisdiction, any law enforcement officer must enforce any TPO issued by an Ohio court

in accordance with the provisions of the order, including removing the defendant from the premises. (Sec. 2919.26(E) and (G).)

Upon a violation of a TPO, the court may issue another TPO, as a pretrial condition of release, that modifies the terms of the TPO that was violated (sec. 2919.26(H)). Additionally, the reckless violation of a TPO is a crime under existing law (sec. 2919.27).

Operation of the bill

The bill specifies that, if a court issues a TPO that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or the family or household member, the TPO must state clearly that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant or family or household member to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant or family or household member. The bill specifies that this provision does not limit any discretion of a court to determine that an alleged offender charged with the offense of "violating a protection order," with a violation of a municipal ordinance substantially equivalent to that offense, or with contempt of court, which charge is based on an alleged violation of a TPO, did not commit the violation or was not in contempt of court (sec. 2919.26(C)(2)).

Domestic violence civil protection orders and consent agreements

Existing law

In general. Existing law authorizes a person to file a petition with a court of common pleas (or with the domestic relations division of a court of common pleas in counties with such a division) seeking civil relief from domestic violence. The petition must contain or state an allegation that the respondent engaged in "domestic violence" (see "***Definitions***," below) against a "family or household member" (see "***Definitions***," below) of the respondent, a description 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 the civil relief. (Sec. 3113.31(C).)

Ex parte orders; hearings. A person who files a petition of the type described in the preceding paragraph may request an *ex parte* order and, upon the making of such a request, the court must hold an *ex parte* hearing on the same day the petition is filed. For "good cause shown" at the hearing, the court may enter any temporary orders that it finds necessary to protect the family or household member from domestic violence. The law specifies that immediate and present danger of domestic violence to the family or household member constitutes good cause for purposes of this provision, and that "immediate and present danger" includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm or in which the respondent has *previously engaged in* domestic violence against the family or household member.

If the court, after an *ex parte* hearing, issues a civil protection order, the court must schedule and hold a full hearing within: (1) seven days after the *ex parte* hearing if the order grants possession of the residence or household to the petitioner or other family or household member to the exclusion of the respondent or requires the respondent to provide alternative housing, or (2) ten days after the *ex parte* hearing if the order is any other type of authorized civil protection order. The respondent must be given notice of, and an opportunity to be heard at, the full hearing.

If a person who files a petition requesting civil relief from domestic violence does not request an *ex parte* order, or, if the person requests an *ex parte* order but the court does not issue such an order after an *ex parte* hearing, the court must proceed as in a normal civil action and grant a full hearing on the matter.

Any proceeding in relation to a petition requesting civil relief from domestic violence must be conducted in accordance with the Civil Rules, except that a civil protection order may be obtained with or without bond. The remedies and procedures provided in relation to such a petition are in addition to, and not in lieu of, any other available civil or criminal remedies. (Sec. 3113.31(D) and (G).)

Contents and duration of CPOs. After an *ex parte* or full hearing, the court may grant any civil protection order or approve any consent agreement (hereafter, referred to collectively as "CPOs") to bring about a cessation of domestic violence against the family or household members. The CPO may do any of the following: (1) direct the respondent to refrain from abusing the family or household members, (2) if the petitioner solely owns or leases or the petitioner and the respondent jointly own or lease the residence or household, grant possession of it to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent or requiring the respondent to leave, (3) if the respondent has a duty to support the petitioner or other family or household member who is living in the residence or household and the respondent is its sole owner, grant possession of the residence or household 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) if no other court has

done or is doing so, temporarily allocate parental rights and responsibilities for the care of, or establish temporary visitation rights regarding, minor children, (5) if the respondent customarily provides for, contributes to, or has a duty to provide support for the family or household member, require the respondent to maintain support, (6) require the respondent, petitioner, domestic violence victim, or any combination of them to seek counseling, (7) require the respondent to refrain from entering the petitioner's or family or household member's residence, school, business, or place of employment, (8) grant other relief the court considers fair and equitable, including relief regarding motor vehicle use or personal property apportionment, or (9) if a civil protection order previously has been issued in a prior action, prohibit the respondent from returning to the residence or household and *prohibit the petitioner from inviting or admitting the respondent to the residence while the order is in effect*. A court may not issue a civil protection order that requires a petitioner to do or to refrain from doing an act that the court may require a respondent to do under the provisions described above in clauses (1) to (5), (7), or (8) unless certain specified criteria are satisfied.

A CPO is valid until a date certain, but not later than *two years* from the date of its issuance or approval. Subject to this durational limitation, an order of the type described in clause (4) or (5) of the preceding paragraph terminates on the date that a court in a specified domestic relations or juvenile proceeding issues a "custody" or support order. A CPO may be renewed in the same manner as the original CPO was issued or approved. (Sec. 3113.31(E).)

Enforcement of CPOs. The court must provide a copy of any CPO it issues or approves to the petitioner, the respondent, and all law enforcement agencies with jurisdiction to enforce the CPO. Every law enforcement agency must maintain an index of CPOs delivered to it. A petitioner who obtains a CPO may register it in any county in the state, pursuant to a specified procedure, but, regardless of whether the CPO is registered in the county in which the officer's agency has jurisdiction, any law enforcement officer must enforce any CPO issued or approved by an Ohio court in accordance with the provisions of the CPO, including removing the respondent from the premises. (Sec. 3113.31(F) and (N).)

A person who violates a CPO is subject to punishment for contempt of court and, the reckless violation of a CPO is a crime under existing law (secs. 3113.31(L) and 2919.27).

Definitions. For purposes of the above-described CPO-related provisions, (sec. 3113.31(A)):

(1) "Domestic violence" means the occurrence of one or more of the following acts against a family or household member: (a) attempting to cause or recklessly causing bodily injury, (b) placing another person by the threat of force in fear of imminent serious physical harm or committing the offense of menacing by stalking or aggravated trespass, or (c) committing any act with respect to a child that would result in the child being an abused child.

(2) "Family or household member" means any of the following:

(a) Any of the following who is residing or has resided with the respondent: (i) a spouse, a "person living as a spouse" (see below), or a former spouse of the respondent, (ii) a parent or child of the respondent, or another person related by consanguinity or affinity to the respondent, or (iii) 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;

(b) The *natural parent* of any child of whom the respondent is the other natural parent.

(3) "Person living as a spouse" means a person who is living or has lived with the respondent in a common law marital relationship, who otherwise is cohabiting with the respondent, or who otherwise has cohabited with the respondent *within one year* prior to the date of the alleged occurrence of the act in question.

Operation of the bill

Ex parte orders; hearings. The bill generally retains the existing procedures governing the issuance of *ex parte* CPOs but modifies the provisions that govern the determination of what constitutes the "good cause" necessary for the issuance of an *ex parte* order and those that govern the time of a full hearing to be conducted after the issuance of an *ex parte* order.

The bill retains the existing provisions that specify that: (1) if a person who files a petition seeking a CPO requests an *ex parte* order, the court still must find "good cause shown" at the *ex parte* hearing on the motion in order to issue any temporary CPO to protect the family or household member from domestic violence, and (2) that "immediate and present danger" of domestic violence to the family or household member constitutes good cause shown for purposes of the provision described in clause (1). However, the bill modifies the existing provision that provides examples of "immediate and present danger." Under the bill, "immediate and present danger" includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm or in which the respondent *previously has been convicted of or pleaded guilty to an offense that constitutes "domestic violence"* (see "**Definitions**," below) against the family or household member. (Sec. 3113.31(D).)

Additionally, under the bill, if the court issues an *ex parte* civil protection order, it must schedule a full hearing for a date that is within whichever of the following periods is applicable: (1) seven court days after the *ex parte* hearing, if the order grants possession of the residence or household to the petitioner or other family or household member to the exclusion of the respondent or requires the respondent to provide alternative housing, or (2) ten court days after the *ex parte* hearing if the order is any other type of authorized civil protection order.

The bill specifies that the court must hold the full hearing on the date scheduled under the provision described in the preceding paragraph unless the court grants a continuance of the full hearing to a reasonable time determined by the court, under any of the following circumstances or for any of the following reasons: (1) prior to the date scheduled for the full hearing, the respondent has not been served with the petition requesting the *ex parte* CPO and notice of the full hearing, (2) the parties consent to the continuance, (3) the continuance is needed to allow a party to obtain counsel, or (4) the continuance is needed for other good cause. The bill also adds a new provision that specifies that an *ex parte* CPO does not expire because of a failure to serve notice of the full hearing upon the respondent before the date set for the full hearing under the above-described provisions or because the court grants a continuance under those provisions. (Sec. 3113.31(D)(2).)

Contents and duration of CPOs. The bill retains the existing provisions governing the contents of a CPO and governing issued or approved CPOs, with the following modifications:

(1) It clarifies that, in any case in which a court issues or approves a CPO, the court may include in the CPO a requirement that the respondent be evicted from or vacate the residence or household or refrain from entering the residence, school, business, or place of employment of the petitioner or a family or household member (sec. 3113.31(E)(2)).

(2) It specifies that, if a court issues or approves a CPO that includes a requirement of a type described above in paragraph (1), the CPO must state clearly that the CPO cannot be waived or nullified by an invitation to the respondent from the petitioner or other family or household member to enter the residence, school, business, or place of employment or by the respondent's entry into one of those places otherwise upon the consent of the petitioner or other family or household member (sec. 3113.31(E)(7)(a)).

(3) It specifies that the provision described in the preceding paragraph does not limit any discretion of a court to determine that a respondent charged with the offense of "violating a protection order," with a violation of a municipal ordinance substantially equivalent to that offense, or with contempt of court, which charge is based on an alleged violation of a CPO, did not commit the violation or was not in contempt of court (sec. 3113.31(E)(7)(b)).

(4) It specifies that an order issued under the CPO provisions, other than an *ex parte* order, that grants a protection order or approves a consent agreement, or that refuses to grant a protection order or approve a consent agreement, is a final, appealable order (sec. 3113.31(G)).

The bill increases the general duration of CPOs. Under the bill, a CPO is valid until a date certain but not later than *five years* (instead of *two years*) from the date of its issuance or approval (sec. 3113.31(E)(3)(a)).

Definitions. The bill modifies the existing definitions of "family or household member" and "person living as a spouse" that apply to the CPO-related provisions. The bill retains the portion of the existing definition of "family or household member" described above in paragraph (2)(a) but modifies the portion described above in paragraph (2)(b) to refer to "the *natural parent* of any child of whom the respondent *is, or is alleged to be, the other natural parent.*" The bill modifies the definition of "person living as a spouse" so that it means a person who is living or has lived with the respondent in a common law marital relationship, who otherwise is cohabiting with the respondent, or who otherwise has cohabited with the respondent *within five years* (instead of *within one year*) prior to the date of the alleged commission of the act in question. (Sec. 3113.31(A)(3) and (4).)

Enforcement in Ohio of a protection order issued in another state

The Revised Code currently does not specifically address the enforcement in Ohio of an order issued in another state that is comparable to a TPO, a CPO, or an "anti-stalking protection order" (see **COMMENT 1**). Anti-stalking protection orders are issued under section 2903.213 in relation to a criminal complaint alleging that a person has committed the offense of aggravated menacing, menacing by stalking, menacing, or aggravated trespass; the procedures that apply relative to the issuance of an anti-stalking protection order are similar to those that apply relative to the issuance of a TPO. The bill enacts statutory provisions that specifically require the enforcement in Ohio of a "protection order issued by another state."

Under the bill, a person who has obtained a "protection order issued by a court of another state" (see the second succeeding paragraph) 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 must 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, municipal court, and county court must 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 must establish and maintain a registry for protection orders delivered to the agency under this provision and must note in the registry the date and time that the agency received an order. (Sec. 2919.272(B) and (C).)

An officer of an Ohio 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 offender's agency has jurisdiction (sec. 2919.272(D)). (See **COMMENT 2**.)

As used in the above-described provisions, "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. (Secs. 2919.272(A) and 2919.27(D).)

The bill also modifies an existing provision that, in relevant part, currently requires the police force of a municipal corporation to obey and enforce all TPOs, all CPOs, and all anti-stalking protection orders to also require municipal police forces to similarly obey and enforce "protection orders issued by courts of another state," as defined above (sec. 737.11).

Finally, the bill modifies existing provisions that grant each municipal court and each county court original jurisdiction within its territory in any action concerning the issuance and enforcement of TPOs or anti-stalking protection orders to also grant each municipal court and each county court original jurisdiction within its territory in any action concerning the enforcement of "protection orders issued by another state," as defined above (secs. 1901.18(A)(9), 1901.19(A)(6), and 1907.18(A)(7)).

Criminal offense of violation of a TPO, a CPO, an anti-stalking protection order, or a protection order issued by a court of another state

Existing law

Existing law prohibits a person from recklessly violating any terms of a TPO, a CPO, or an "anti-stalking protection order." Anti-stalking protection orders are issued under section 2903.213 in relation to a criminal complaint alleging that a person has committed the offense of aggravated menacing, menacing by stalking, menacing, or aggravated trespass; the procedures that apply to the issuance of an anti-stalking protection order are similar to those that apply to the issuance of a TPO. A violation of the prohibition is the offense of "violating a protection order or consent agreement or anti-stalking protection order." (Sec. 2919.27.)

Violating a protection order or consent agreement or anti-stalking protection order is classified as one of the following (sec. 2919.27(B)):

(1) If the offense involves a violation of a TPO or CPO, the offense generally is a misdemeanor of the first degree. However, if the offender previously has been convicted two or more times of "menacing by stalking" or "aggravated trespass" that involved the same person who is the subject of the TPO or CPO or previously has been convicted one or more times of "violating a protection order or consent agreement or anti-stalking protection order," the offense is a felony of the fifth degree.

(2) If the offense involves a violation of an anti-stalking protection order, the offense generally is a misdemeanor of the first degree. However, if the offender previously has been convicted two or more times of "violating a protection order or consent agreement or anti-stalking protection order" involving an anti-stalking protection order, two or more times of "aggravated menacing," "menacing by stalking," "menacing," or "aggravated trespass" that involved the same person who is the subject of the anti-stalking protection order, or two or more times of the former offense that pertained to the violation of an anti-stalking protection order (former sec. 2903.214, repealed on July 1, 1996), the offense is a felony of the fifth degree.

Operation of the bill

The bill expands the offense of "violating a protection order or consent agreement or anti-stalking protection order" to also prohibit a person from recklessly violating the terms of a "protection order issued by a court of another state" (see the second succeeding paragraph). To conform to this expansion of the offense, the bill renames the offense as "violating a protection order." A violation of the new prohibition the bill enacts generally is a misdemeanor of the first degree; however, if the offender previously has been convicted two or more times of "menacing by stalking" or "aggravated trespass" that involved the same person who is the subject of the TPO or CPO or previously has been convicted one or more times of "violating a protection order," the violation is a felony of the fifth degree. The bill does not change the penalty for the existing prohibitions contained in the offense. (Sec. 2919.27(A) and (B).)

It is an affirmative defense to a charge of a violation of the new prohibition the bill enacts 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) (sec. 2919.27(C)). (See clauses (ii) and (iii) of **COMMENT 1**(b) for a listing of the § 2265(b) requirements and the provisions of § 2265(c)).

For purposes of this provision, "protection order issued by a court of another state" has the same meaning as is described above in "**Enforcement in Ohio of a protection order issued in another state**" (sec. 2919.27(D)).

Preferred arrest policy for domestic violence and violations of protection orders

Existing law

On-sight warrantless arrest. Existing law specifies that, if a sheriff, deputy sheriff, marshal, deputy marshal, municipal police officer, township constable or police officer, metropolitan housing authority police officer, regional transit authority police officer, state university law enforcement officer, or Ohio veterans home police officer finds a person violating, within the limits of the political subdivision or other governmental entity in which the officer is appointed, employed, or elected, a state law, municipal ordinance, or township resolution, the officer *must* arrest and detain the person until a warrant can be obtained (sec. 2935.03(A)).

Warrantless arrest based on an officer's "reasonable ground" and "reasonable cause" to believe a specified offense has been committed by a particular person. Existing law also provides that, if any peace officer described in the preceding paragraph has reasonable ground to believe that any of a list of specified offenses, including the offense of "domestic violence," the offense of "violating a protection order or consent agreement" (see **COMMENT 3**), the offense of "menacing by stalking," or the offense of "aggravated trespass," has been committed within the limits of the political subdivision or other governmental entity in which the officer is appointed, employed, or elected, the officer *may* arrest and detain until a warrant can be obtained any person whom the officer has reasonable cause to believe is guilty of the violation (sec. 2935.03(B)(1)).

For purposes of the arrest authority described in the preceding paragraph, a person's execution of a written statement alleging that another person has committed the offense of "menacing by stalking" or "aggravated trespass" constitutes reasonable ground to believe the offense was committed and reasonable cause to believe that the named other person has committed it. Also for purposes of that arrest authority, any of the listed peace officers has reasonable ground to believe that the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" has been committed and reasonable cause to believe that a particular person committed the offense if any of the following occurs: (1) a person executes a written statement alleging that another person has committed the offense against the person who executes, or the child of the person who executes, the statement, (2) no such written statement is executed, but the officer, based upon the officer's own knowledge and observation of the facts and circumstances present or based upon any other information, including any reasonably trustworthy information given to the officer by the alleged victim of the offense or a witness, concludes that there are reasonable grounds to believe that the offense has been committed and reasonable grounds to believe that the person in question has committed it, or (3) no such written statement is issued, but the officer witnessed the person in question commit the offense. (Sec. 2935.03(B)(2) and (3)(a).)

"Preferred arrest" policy regarding "reasonable ground/reasonable cause" warrantless arrest for the offense of "domestic violence" or "violating a protection order or consent agreement." Existing law specifies that if, pursuant to the provisions described in the preceding paragraph, a peace officer has reasonable grounds to believe that the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" (see **COMMENT 3**) has been committed and reasonable cause to believe that a particular person is guilty of committing it, *it is the preferred course of action in Ohio that the officer arrest and detain that person under the provision described in the preceding part of the analysis until a warrant can be obtained.* If it appears that family or household members have committed the offense against each other, *it is the preferred course of action in Ohio that the officer, under the provision described in the preceding part of the analysis, arrest and detain until a warrant can be obtained the person who committed the offense and whom the officer has reasonable cause to believe is the primary physical aggressor* (the officer may arrest other

persons who were not the primary physical aggressor). Existing law lists a series of factors that an officer must consider, in multiple-offense situations, in determining which person is the primary physical aggressor. (Sec. 2935.03(B)(3)(b) and (d).)

If a peace officer who is subject to the above-described "preferred arrest" policy does not arrest and detain a person whom the officer has reasonable cause to believe committed the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" when it is the preferred course of action in Ohio as described above that the officer arrest that person, the officer must articulate in a written report of the incident that is required under existing law (see "***Law enforcement agency domestic violence policy***," below) a clear statement of the officer's reasons for not arresting and detaining that person until a warrant can be obtained (sec. 2935.03(B)(3)(c)).

Existing provisions related to the above-described provisions specify that (sec. 2935.03(B)(3)(e), (f), and (h)): (1) a peace officer cannot require the victim of the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" to consent to the filing of charges or sign a complaint regarding the offense as a prerequisite to arresting or charging the alleged offender, (2) a prosecutor is not required to dismiss charges against a person arrested for or charged with the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" if the victim does not cooperate or wishes to have the charges dismissed, but, rather, must consider all relevant information in determining whether to dismiss the charges, (3) a peace officer cannot consider a shortage of jail cell space in determining whether to arrest a person for the offense of "domestic violence" or the offense of "violating a protection order or consent agreement", and (4) if a peace officer responds to a report of an alleged offense of "domestic violence" or an alleged offense of "violating a protection order or consent agreement" and if the circumstances of the incident involved the use or threatened use of a deadly weapon or any person involved in the incident brandished a deadly weapon during or in relation to the incident, the deadly weapon in question is contraband, the officer must seize it as such, and it is subject to disposition under the existing Contraband Seizure and Forfeiture Law contained in section 2933.43.

Operation of the bill

The bill replaces all references to the offense of "violating a protection order or consent agreement" that are contained in the existing law provisions described above in "***Preferred arrest policy for domestic violence and violations of protection orders***" with references to the offense of "violating a protection order." This offense name is the name that the bill assigns to a violation of section 2919.27, which, as expanded under the bill, pertains to violations of TPOs, CPOs, anti-stalking protection orders, and protection orders issued by a court of another state. Thus, under the bill, the state's "preferred arrest" policy regarding "reasonable ground/reasonable cause" warrantless arrests and all of the related provisions described above will apply in relation to violations of anti-stalking protection orders and violations of protection orders issued by a court of another state as well as to violations of TPOs, violations of CPOs, and incidents of the offense of "domestic violence." (Sec. 2935.03(B)(1) and (3).)

Law enforcement agency domestic violence policy

Existing law

Existing law specifies that not later than March 9, 1995 (i.e., 90 days after the effective date of sec. 2935.032), each law enforcement agency or governmental entity served by a peace officer described above in "***On-sight warrantless arrest***" must adopt written policies, written procedures for implementing the policies, and other written procedures for its peace officers to follow in implementing the state's "preferred arrest" policy regarding "reasonable ground/reasonable cause" warrantless arrests for the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" (see **COMMENT 3**) and for their appropriate response to each report of an alleged incident of either of those offenses (sec. 2935.032(A)).

The required written policies and procedures must conform to the "preferred arrest" policy and other specified criteria, and must include, but are not limited to all of the following: (1) provisions specifying that, if an officer responds to an alleged incident of the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" and the officer determines that there are reasonable grounds to believe that a person engaged in conduct constituting the elements of the offense of "felonious assault" or "aggravated assault," regardless of whether the victim of the assault was a family or household member, the officer *must treat* the incident as a felonious assault or aggravated assault and, unless the person who committed the assault and one or more other persons committed offenses against each other and the offender who committed the assault is not the primary physical aggressor in the matter, *must arrest* the offender who committed the assault for the offense of felonious assault aggravated assault, (2) provisions requiring the officers to respond without undue delay to reports of an alleged incident of the offense of "domestic violence" or "violating a protection order or consent agreement," separate the victim and the person who allegedly committed the offense, and comply with other procedures in responding to the report, (3) sanctions to be imposed on peace officers who fail to comply with any provision in the policy, with the state's "preferred arrest" policy, or with other specified provisions, and (4) examples of reasons that a peace officer may consider for not arresting and detaining, under the state's "preferred arrest policy," a

person who allegedly committed the offense of "domestic violence" or the offense of "violating a protection order or consent agreement." Nothing in the above-described provisions related to the law enforcement agency or governmental entity written policy or in the law relating to the state's "preferred arrest" policy precludes an agency or entity from including in its policy provisions that require its officers to arrest for incidents of the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" or limit their discretion in choosing whether to arrest for such incidents. If an agency or entity adopts such a mandatory arrest or discretion-limiting provision, its officers must comply with the provision. (Sec. 2935.032(A) and (B).)

When a peace officer described above in "***On-sight warrantless arrest***" investigates a report of an alleged incident of the offense of "domestic violence" or the offense of "violating a protection order or consent agreement," the officer must complete a written domestic violence report, regardless of whether an arrest is made, must advise the victim of the availability of a TPO or CPO, and must give the victim the officer's name and other specified information regarding the treatment of the incident and services available to the victim. The officer's report must document the officer's observations, any visible injuries, any weapons present, the alleged offender's actions, any statements made, and any other significant facts or circumstances, and, if the officer does not arrest an alleged offender when it is the preferred course of action under the state's "preferred arrest policy" regarding "reasonable ground/reasonable cause" warrantless arrests for the offense of "domestic violence" or the offense of "violating a protection order or consent agreement," it must articulate the officer's clear statement of the officer's reasons for not making an arrest under the policy. The officer must submit the report to the law enforcement agency or governmental entity the officer serves. (Sec. 2935.032(C) to (E).)

Each law enforcement agency or governmental entity that is required to adopt policies and procedures under the above-described provisions must adopt them in conjunction and consultation with shelters in the community for victims of domestic violence and private organizations, law enforcement agencies, and other public agencies in the community that have expertise in the recognition and handling of domestic violence cases (sec. 2935.032(E)).

Operation of the bill

The bill replaces all references to the offense of "violating a protection order or consent agreement" that are contained in the existing provisions described above in "***Existing law***" with references to the offense of "violating a protection order." This offense name is the name that the bill assigns to a violation of section 2919.27, which, as expanded under the bill, pertains to violations of TPOs, violations of CPOs, violations of anti-stalking protection orders, and violations of protection orders issued by a court of another state. Thus, under the bill, the above-described provisions regarding written policies and procedures that a law enforcement agency or other governmental entity must adopt in relation to the state's "preferred arrest" policy for "reasonable ground/reasonable cause" warrantless arrests and regarding the filing of written incident reports by law enforcement officers will apply in relation to violations of anti-stalking protection orders and violations of protection orders issued by a court of another state as well as to violations of TPOs, violations of CPOs, and incidents of the offense of "domestic violence." For purposes of these provisions, "the offense of violating a protection order" includes the former offense of "violating a protection order or consent agreement or anti-stalking protection order" as it exists under current law and prior to its modification by the bill. (Sec. 2935.032.)

The bill also modifies the provision relating to mandatory arrests for the offense of "felonious assault" and "aggravated assault" that must be included in a law enforcement agency's or governmental entity's written domestic violence policy to conform to changes that recently were made in the elements of the offenses of "felonious assault" and "aggravated assault." As of September 6, 1996, both of those assault offenses, which formerly prohibited conduct of a specified nature against "another person," were expanded by Am. Sub. S.B. 239 of the 121st General Assembly to also prohibit the commission of the specified conduct against "another's unborn" (the cited assault offenses are set forth in secs. 2903.11 and 2903.12, not in the bill; see **COMMENT 4**). Because the existing assault-related mandatory arrest provision refers to the elements of the offenses of "felonious assault" and aggravated assault," the bill modifies those references to conform to the expansion of the application of those offenses and to accurately parallel the elements of those offenses. (Sec. 2935.032(A)(1).)

The bill specifies that, not later than 90 days after its effective date (i.e., "the effective date of this amendment"), each law enforcement agency or governmental entity served by a peace officer described above in "***On-sight warrantless arrest***" must adopt written policies, written procedures for implementing the policies, and other written procedures for its peace officers to follow in implementing the state's "preferred arrest" policy regarding "reasonable ground/reasonable cause" warrantless arrests for the offense of "domestic violence" or the offense of "violating a protection order" and for their appropriate response to each report of an alleged incident of either of those offenses (sec. 2935.032(A)). In effect, this change requires each such agency and entity to adopt written policies and procedures that conform to the bill's changes described above and gives the agencies and entities 90 days after the bill's effective date to do so.

Immunity from civil liability for peace officers who arrest a person for the offense of violating a protection order

Existing law

Existing law provides that, if a peace officer arrests and detains a person for the offense of domestic violence or the offense of "violating a protection order or consent agreement" (see **COMMENT 3**) because the officer, under the state's "preferred arrest" policy regarding those offenses, had reasonable ground to believe that the offense was committed and reasonable cause to believe that the person arrested committed it, the officer, to the extent described in and in accordance with the existing State Officer or Employee Immunity Law (the SOEI Law) contained in section 9.86 or the existing Political Subdivision Employee Immunity Law (the PSEI Law) contained in section 2744.03, is immune in any civil action for damages for injury, death, or loss to person or property that arises from or is related to the arrest and detention (sec. 2935.03(B)(4)).

The existing SOEI Law contained in section 9.86 provides that, in general, an officer or employee of the state is not liable in any civil action that arises under state law for damage or injury caused in the performance of the officer's or employee's duties, unless the officer's or employee's actions were manifestly outside the scope of the officer's or employee's employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner (sec. 9.86).

The existing PSEI Law contained in section 2744.03 provides that, in general, in any civil action brought against an employee of a political subdivision to recover damages for injury, death, or loss to persons or property allegedly caused by an act or omission in connection with a governmental function, the employee is immune from liability unless: (1) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (2) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (3) liability is expressly imposed upon the employee by a statute (sec. 2744.03(A)(6)). This provision does not apply relative to certain types of civil actions, including civil actions under federal law (sec. 2744.09).

Operation of the bill

The bill does not modify the above-described existing immunity provision regarding the arrest of a person for the offense of "domestic violence" or the offense of "violating a protection order or consent agreement" (other than to conform it to the bill's change of the name of the latter offense), but it enacts a new immunity provision that specifies that, to the extent described in and in accordance with the existing SOEI Law or the existing PSEI Law, a peace officer who arrests an offender for "the offense of violating a protection order" (see below) with respect to a protection order or consent agreement of Ohio or another state that on its face is valid is immune from liability in a civil action for damages for injury, death, or loss to person or property that allegedly was caused by or related to the offense (sec. 2935.032(F)).

The bill specifies that, for purposes of this provision, "the offense of violating a protection order" includes the offense of "violating a protection order or consent agreement or anti-stalking protection order," as it exists under current law and prior to its modification by the bill (sec. 2935.032(H)).

Referral of domestic violence case or case involving a violation of a protection order for prosecution under federal law

The bill enacts a new provision that specifies that each law enforcement agency or governmental entity that is required under section 2935.032 to adopt a written domestic violence response policy and that arrests an offender for an alleged incident of the offense of domestic violence or an alleged incident of "the offense of violating a protection order" must consider referring the case to federal authorities for prosecution under federal law if the incident constitutes a violation of federal law (sec. 2935.032(G)).

The bill specifies that, for purposes of this provision, "the offense of violating a protection order" includes the offense of "violating a protection order or consent agreement or anti-stalking protection order," as it exists under current law and prior to its modification by the bill (sec. 2935.032(H)).

Mental evaluation of a person charged with the offense of violating a TPO, a CPO, an anti-stalking protection order, or a protection order issued by a court of another state

Existing law

Existing law provides that, if a person is charged with committing the offense of "violating a protection order or consent agreement or anti-stalking protection order" or a violation of a substantially similar municipal ordinance, the court may order an evaluation of the defendant's mental condition if the court determines that either of the following applies (sec. 2919.271(A)(1)):

(1) If the alleged violation is a violation of a TPO or CPO, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement or conduct by the defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member's property;

(2) If the alleged violation is a violation of an anti-stalking protection order, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order or conduct by the defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

Existing law specifies certain provisions that must be included in the order that requires the evaluation, establishes other procedures and criteria relative to the evaluation, and requires that the evaluation be completed no later than 30 days from the date the order is entered (sec. 2919.271(A)(2) and (B) to (G)).

Operation of the bill

The bill expands the above-described provision pertaining to a court ordering the evaluation of the mental condition of a defendant so that it also applies to a defendant charged with the offense of "violating a protection order" (as renamed under the act) that is based on a violation of "a protection order issued by a court of another state" (sec. 2919.271(A)(1)). Under the bill, the criteria that currently must be found before an evaluation order can be issued regarding a defendant who allegedly committed a violation of an anti-stalking protection order also apply under the bill regarding a defendant who allegedly committed a violation of a protection order issued by a court of another state (sec. 2919.271(A)(1)(b)). All other existing provisions that apply to the issuance of an evaluation order issued regarding a defendant who allegedly committed a violation of a TPO, a CPO, or an anti-stalking protection order also apply under the bill regarding a defendant who allegedly committed a violation of a protection order issued by a court of another state (sec. 2919.271(A)(2) and (B) to (G)).

For purposes of this provision, "protection order issued by a court of another state" has the same meaning as is described above in "**Enforcement in Ohio of a protection order issued in another state**" (secs. 2919.271(G)(6) and 2919.27(D)).

Setting of bail for a person charged with the offense of violating a TPO, a CPO, an anti-stalking protection order, or a protection order issued by a court of another state

Existing law

Existing law provides that, in any case in which a person is charged with the offense of violating a protection order or consent agreement or anti-stalking protection order or a violation of a substantially similar municipal ordinance, and in which the court finds that either of the following criteria applies, the court must determine whether it will order an evaluation of the defendant's mental condition, as described above and, if it decides to so order, must issue the evaluation order prior to setting bail for the defendant (sec. 2937.23(B)):

(1) If the alleged violation is a violation of a TPO or CPO, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of a family or household member covered by the order or agreement or conduct by the defendant that caused a family or household member to believe that the defendant would cause physical harm to that member or that member's property;

(2) If the alleged violation is a violation of an anti-stalking protection order, that the violation allegedly involves conduct by the defendant that caused physical harm to the person or property of the person covered by the order or conduct by the defendant that caused the person covered by the order to believe that the defendant would cause physical harm to that person or that person's property.

Operation of the bill

The bill expands the above-described provision so that it also applies to a defendant charged with the offense of "violating a protection order" (as renamed under the act) based on a violation of "a protection order issued by a court of another state." Under the bill, the criteria that currently apply regarding a defendant who allegedly committed a violation of an anti-stalking protection order also apply under the bill regarding a defendant who allegedly committed a violation of a protection order issued by a court of another state. For purposes of this provision, "protection order issued by a court of another state" has the same meaning as is described above in "**Enforcement in Ohio of a protection order issued in another state**." (Secs. 2937.23(B) and 2919.27(D).)

Mayor's court jurisdiction regarding domestic violence cases and OMVI and OMVUAC cases

Existing law

Under existing law, in all municipal corporations that are not the site of a municipal court and are not a place where a judge of the Auglaize County, Crawford County, Jackson County, Miami County, Portage County, or Wayne County Municipal Court sits by assignment or by designation of the judges pursuant to a specified existing provision of law, the mayor of the municipal corporation has jurisdiction, subject to two exceptions (see below) and two limitations (see below), to hear and determine any prosecution for the violation of an ordinance of the municipal corporation, to hear and

determine any case involving a vehicle parking or standing ordinance of the municipal corporation that has not been decriminalized, and to hear and determine all criminal causes involving any moving traffic violation occurring on a state highway located within the boundaries of the municipal corporation (sec. 1905.01(A)).

The above-stated general jurisdiction of a mayor's court does not apply regarding the offenses of "state OMVI" or "state OMVUAC" (see below), the state offenses of "driving under financial responsibility suspension or revocation" or "driving under OMVI suspension or revocation" (secs. 4507.02(B)(1) and 4507.02(D)(2)), or a violation of a municipal ordinance that is substantially equivalent to any of those state offenses if, *within five years* of the date of the offense or violation charged: (1) if state OMVI or state OMVUAC is charged, the defendant was convicted of state OMVI, state OMVUAC, or a violation of a municipal ordinance similar to either of those offenses, (2) if the state offense of driving under financial responsibility suspension or revocation or driving under OMVI suspension or revocation is charged, the defendant was convicted of the state offense charged or a violation of a municipal ordinance similar to the state offense charged, (3) if a violation of a municipal ordinance similar to state OMVI or state OMVUAC is charged, the defendant was convicted of a violation of that ordinance or a similar ordinance, or the offense of state OMVI or state OMVUAC, (4) if a violation of a municipal ordinance similar to the state offense of driving under financial responsibility suspension or revocation or driving under OMVI suspension or revocation is charged, the defendant was convicted of a violation of that ordinance, a similar ordinance, or a state offense similar to that ordinance, (5) the defendant was convicted of a violation of any state traffic law or municipal traffic ordinance that resulted from a plea bargain down from a charge identified in clause (1) to (4), above, or (6) if state OMVI, state OMVUAC, or a violation of a similar municipal ordinance is charged, the defendant was convicted of a violation of a statute of another state, or an ordinance of a municipal corporation located in a state other than this state, that is substantially similar to state OMVI or state OMVUAC (sec. 1905.01(B) and (C)).

In state OMVI cases, state OMVUAC cases, and similar municipal ordinance cases in which a mayor's court has jurisdiction (i.e., "first-offense" cases), the mayor cannot assert that jurisdiction until after the mayor has completed educational courses prescribed by the Ohio Supreme Court (sec. 1905.03). In other cases in which a mayor's court has jurisdiction, the mayor cannot assert that jurisdiction until after the mayor has completed separate educational courses prescribed by the Ohio Supreme Court (sec. 1905.031).

The offense of state OMVI prohibits a person from operating any vehicle, streetcar, or trackless trolley within Ohio if any of the following applies (sec. 4511.19(A)): the person is under the influence of alcohol, a drug of abuse, or both; the person has a concentration of .10 per cent or more by weight of alcohol in the person's blood; the person has a concentration of .10 grams or more by weight of alcohol per 210 liters of the person's breath; or the person has a concentration of .14 grams or more by weight of alcohol per 100 milliliters of the person's urine. The offense of state OMVUAC prohibits a person who is under 21 years of age from operating any vehicle, streetcar, or trackless trolley within Ohio if any of the following applies (sec. 4511.19(B)): the person has a concentration of at least .02 per cent but less than .10 per cent by weight of alcohol in the person's blood; the person has a concentration of at least .02 grams but less than .10 grams by weight of alcohol per 210 liters of the person's breath; or the person has a concentration of at least .028 grams but less than .14 grams by weight of alcohol per 100 milliliters of the person's urine.

Operation of the bill

Domestic violence cases. The bill removes from mayor's courts the jurisdiction to do any of the following (sec. 1905.01(A) and (E)):

(1) Hear or determine any prosecution or criminal cause involving: (a) the state offenses of "domestic violence" or "violating a protection order," (b) the state offenses of "felonious assault," "aggravated assault," "assault," "menacing by stalking," or "aggravated trespass" involving a person who was a family or household member of the defendant at the time of the violation, or (c) a violation of a municipal ordinance that is substantially equivalent to any offense listed in clause (1)(a) or (b) and that involves a person who was a family or household member of the defendant at the time of the violation;

(2) Hear or determine a motion, or issue a TPO, under state TPO law or under a substantially equivalent municipal ordinance.

OMVI and OMVUAC cases. The bill extends, from five years to six years, the "look back" period that is used to determine whether a mayor's court has jurisdiction over an OMVI or OMVUAC charge. Under the bill, the existing general jurisdiction of a mayor's court does not apply regarding the offenses of state OMVI or state OMVUAC or a violation of a municipal ordinance that is substantially equivalent to either of those state offenses if, *within six years* of the date of the offense or violation charged, the defendant was convicted of any of the offenses or violations described above under "**Existing law**" (sec. 1905.01(B)). This extension conforms the "look back" period for determining mayor's court OMVI and OMVUAC jurisdiction to the "look back" period that currently applies in determining the penalty for the offense of state OMVI, as the latter period was extended, effective October 17, 1996, by Am. Sub. S.B. 166 of the 121st General Assembly (sec. 4511.99(A), not in the bill). The bill does not modify the *five-year* "look back" period that currently applies in determining mayor's court jurisdiction over the state offenses of "driving under financial responsibility

suspension or revocation" or "driving under OMVI suspension or revocation" and violations of municipal ordinances substantially equivalent to those state offenses (sec. 1905.01(C)).

Shelters for victims of domestic violence

Existing law

Existing law contains a program for the provision of government assistance to shelters for victims of domestic violence. The money for the government assistance program is raised through the collection of an extra \$32 filing fee that is imposed in each new action or proceeding for annulment, divorce, or dissolution of marriage (sec. 2303.201(D)) and an extra \$17 fee that is imposed for each marriage license issued in the state. Existing law contains a mechanism for distribution by counties and by the state of the moneys raised for purposes of the program to eligible shelters for victims of domestic violence. (Secs. 3113.33 to 3113.39.)

For purposes of the government assistance program (sec. 3113.33):

- (1) "Domestic violence" means attempting to cause or causing bodily injury to a family or household member, or placing a family or household member by threat of force in fear of imminent physical harm.
- (2) "Family or household member" means any of the following:
 - (a) Any of the following who is residing or has resided with the person committing the domestic violence (hereafter, "the offender"): (i) a spouse, a "person living as a spouse" (see below), or a former spouse of the offender, (ii) a parent or child of the offender, or another person related by consanguinity or affinity to the offender, (iii) a parent or a child of a spouse, person living as a spouse, or 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, or (iv) the dependents of any person listed in clause (i) to (iii);
 - (b) The *natural parent* of any child of whom the offender is the other natural parent.
- (3) "Shelter for victims of domestic violence" means a facility that provides temporary residential service or facilities to family or household members who are victims of domestic violence.
- (4) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender *within one year* prior to the date of the alleged occurrence of the act in question.

Operation of the bill

The bill modifies the existing definitions of "family or household member" and "person living as a spouse" that apply for purposes of the program of providing government financial assistance to shelters for victims of domestic violence. Regarding the definition of "family or household member," the bill retains the portion of the existing definition described above in paragraph (2)(a), but modifies the portion described above in paragraph (2)(b) to refer to "the *natural parent* of any child of whom the offender *is, or is alleged to be, the other natural parent*" (sec. 3113.33(B)(2)). The bill modifies the definition of "person living as a spouse" so that it means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender *within five years* (instead of *within one year*) prior to the date of the alleged occurrence of the act in question (sec. 3113.33(D)).

COMMENT

1(a). Although the Revised Code currently does not specifically address the enforcement in Ohio of a protection order issued in another state, Article IV, Section 1 of the United States Constitution generally requires each state to give "full faith and credit" to the public acts, records, and judicial proceedings of every other state and authorizes Congress to enact acts pertaining to the manner in which such acts, records, and proceedings are to be proved and "the effect thereof."

(b) Section 2265 of Title 18 of the United States Code provides that: (i) any protection order issued that is consistent with the provisions described below in clause (ii) by the court of one state or Indian tribe (the issuing state or Indian tribe) must be accorded full faith and credit by the court of another state or Indian tribe (the enforcing state or Indian tribe) and enforced as if it were the order of the enforcing state or Indian tribe, (ii) a protection order issued by a state or tribal court is "consistent with this clause" if the court has jurisdiction over the parties and matter under the law of the state or Indian tribe and if reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process (in the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state or tribal law and, in any event, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights), and (iii) a protection order issued by a state or tribal

court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if no cross or counter petition, complaint, or other written pleading was filed seeking the protection order, or if a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

Section 2266 of Title 18 of the United States Code specifies that, for purposes of the provision described in the preceding paragraph, a "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

2. The provisions included in the bill regarding the registration in Ohio of protection orders issued by a court of another state and regarding the enforcement in Ohio of protection orders issued by a court of another state are similar to the existing provisions, contained in sections 2919.26(G) and 3113.31(F) and (N), that pertain to the registration in an Ohio county of a TPO or CPO that was issued in another Ohio county and regarding the enforcement in any Ohio county of a TPO or CPO that was issued anywhere in Ohio.

3. Prior to July 1, 1996, the offense that is located in section 2919.27 and that currently is denoted "violating a protection order or consent agreement or anti-stalking protection order" prohibited only the violation of a TPO or CPO and was named "violating a protection order or consent agreement." On July 1, 1996, Am. Sub. S.B. 2 of the 121st General Assembly expanded the offense to also prohibit violations of anti-stalking protection orders and renamed the offense accordingly, but, due to an oversight, it neglected to change references to the former offense of "violating a protection order or consent agreement" that are contained in existing sections 2935.03 and 2935.032. Thus, the references to the offense of "violating a protection order or consent agreement" that currently are contained in those sections are erroneous and out of date. The practical effect of these references to the nonexistent offense is unclear; however, it is arguable that, because the prohibition contained in section 2919.27 applied only to violations of TPOs and CPOs when the references contained in sections 2935.03 and 2935.032 were enacted, the references probably include violations of the prohibition that are based on violations of a TPO or CPO but do not include violations of the prohibition that are based on violations of an anti-stalking protection order.

4. Existing section 2903.09 provides that, for purposes of the offenses of "felonious assault," "aggravated assault," and certain other specified homicide-related and assault-related offenses, "another's unborn" means a member of the species Homo Sapiens, who is or was carried in the womb of another, during a period that begins with fertilization and that continues unless and until live birth occurs.

HISTORY

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