



**H.B. 395\***

127th General Assembly  
(As Re-referred to H. Juvenile and Family Law)

**Reps. Hughes, Flowers, Wagoner, Evans, Yuko, S. Williams**

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**BILL SUMMARY**

- Provides a procedure for the return of personal property held by a law enforcement agency upon the expiration or termination of a protection order.
- Excludes a spouse's social security benefits from a divorce court's jurisdiction.

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**CONTENT AND OPERATION**

**Return of personal property**

Existing law allows a victim of domestic violence or menacing by stalking to petition the court for a protection order. In granting a protection order, the court may grant any relief that the court considers equitable and fair. Federal domestic violence laws<sup>1</sup> prohibit a person subject to such a protection order from possessing

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\* This analysis was prepared before the report of the House Rules and Reference Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

<sup>1</sup> In pertinent part, 18 U.S.C. 922(g)(8) prohibits any person from possessing any firearm or ammunition if all of the following apply to the person who is subject to the order:

(1) The order was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate;

(2) The order restrains the person from harassing, stalking, or threatening an intimate partner of the person or child of the intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child;

a firearm if the person protected by the order is an intimate partner or the child of an intimate partner of the person subject to the order. Therefore, firearms belonging to a person subject to such a protection order must either be disposed of or surrendered to the local law enforcement agency. Existing law does not provide any procedures for the return of property that is in the possession of a law enforcement agency. (R.C. 2903.214 and 3113.31.)

The bill requires any law enforcement agency that is in possession of personal property belonging to a party to a menacing by stalking or domestic violence protection order<sup>2</sup> (pursuant to the terms of the protection order) to return that property to the party from whom the property was received, confiscated, or otherwise obtained, upon the expiration or other termination of a protection order. "Termination of a protection order" includes the dismissal of a petition for a protection order. To begin the process of recovering the property, the owner must file a written request with the law enforcement agency for the return of the property within 60 days from the day of the expiration or termination of the order. The request must include the owner's name, address, and a telephone number, if any, and a copy of the dismissal of the petition for the protection order if the petition was dismissed. If the owner does not timely make this written request, the property will be disposed of by the law enforcement agency in the same manner as seized and forfeited property. (R.C. 2903.214(N), 3113.311(E)(9), and 3113.311(A) and (B).)

### **Return of firearms**

If the property to be returned is a firearm, the request must also include an affidavit signed by the owner of the firearm stating that the owner is not under any state or federal firearm disability, and the law enforcement agency must make a reasonable attempt to determine whether or not the owner is under any state or federal firearm disability. If the law enforcement agency determines that the owner *is* under any state or federal firearm disability, the law enforcement agency must notify the owner that it will not return the firearm as a result of that disability and must dispose of the firearm. If the law enforcement agency determines that the owner *is not* under any state or federal firearm disability, the law enforcement

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(3) The order includes a finding that the person represents a credible threat to the physical safety of the intimate partner or child or, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

<sup>2</sup> "Protection order" as used in this provision includes a consent agreement approved under the Domestic Violence Protection Order Law (R.C. 3113.311(A)(1)).

agency must return the firearm to the party as soon as possible after making its determination. (R.C. 3113.311(B)(2) and (3) and (C).)

### **Notice provided by the court**

The bill also requires the issuing court to provide the parties with the following notice upon the issuance of an *ex parte* or final menacing by stalking or domestic violence protection order and also, in the case of a domestic violence consent order, upon the approval of a consent agreement (R.C. 2903.214(E)(6) and 3113.31(E)(3)(d)):

Any personal property received, confiscated, or otherwise obtained by a law enforcement agency pursuant to this protection order may only be returned if you file a written request under R.C. 3113.311 that includes your name, address, and a telephone number, if any, with the law enforcement agency not later than 60 days after the expiration or other termination of this protection order (or consent agreement). Termination of the protection order includes a dismissal of the petition for the protection order. If the property involved is a firearm, you must include an affidavit with your written request stating that you are not under any state or federal firearm disability. Failure to file a timely written request will result in disposal of the property.

### **Exclusion of social security benefits in divorce proceedings**

Existing law provides that, in divorce proceedings, a court must determine what constitutes "marital property" and what constitutes "separate property" (in legal separation proceedings, a court may make this determination upon the request of a party). Upon making such a determination, the court must divide the marital and separate property equitably between the spouses. The court has jurisdiction over all property in which one or both spouses have an interest. (R.C. 3105.171(B).)

The bill excludes social security benefits from the court's jurisdiction, so that social security benefits may not be divided or awarded to the other spouse. The bill also eliminates the court's duty to divide the separate property. The bill simply requires that the court divide the marital property, but no longer requires it to be divided equitably. Finally, the bill adds an additional factor for the court to consider when making a division of marital property and when determining whether to make a distributive award: the bill requires a court to consider any

retirement benefits of the spouses, excluding the social security benefits of a spouse (except as may be relevant for purposes of dividing a public pension). (R.C. 3105.171(B), (C), (F)(9), and (G).)

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	11-15-07
Re-referred to H. Juvenile & Family Law	---

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