



Dennis M. Papp

Bill Analysis
Legislative Service Commission

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Sens. Sawyer, Mason, Kearney, Cates, Coughlin, Goodman, Schuler, Stivers

BILL SUMMARY

- Provides that, if a person files a petition requesting the issuance of a civil protection order for the benefit of an alleged victim of the offense of "menacing by stalking" or of a sexually oriented offense: (1) if the court after a full hearing finds by clear and convincing evidence that the petitioner reasonably believed that the respondent's conduct over the course of the year preceding the filing of the petition endangered the health, welfare, or safety of the person to be protected and that the respondent presents a continuing danger to that person, the court must order that the respondent be electronically monitored for a period of time and under the terms and conditions that the court determines are appropriate (the electronic monitoring will be in addition to any other relief granted to the petitioner), (2) if the petitioner seeks relief in the form of electronic monitoring of the respondent, the petition must contain or state an allegation that, for a period of more than one year preceding the filing of the petition, the respondent engaged in conduct that would cause a reasonable person to believe that the health, welfare, or safety of the person to be protected was at risk, a description of the nature and extent of that conduct, and an allegation that the respondent presents a continuing danger to that person, and (3) if the court issues the civil protection order and includes in the order required electronic monitoring of the respondent, the court must direct the sheriff's office or any other appropriate law enforcement agency to install the electronic monitoring device and to monitor the respondent and must order the respondent to pay the cost of the installation and monitoring of the electronic monitoring device.
- Provides that, if an offender commits the offense of "violating a protection order" and the protection order violated was a civil protection

order for the benefit of an alleged victim of the offense of menacing by stalking or of a sexually oriented offense, the court may require in addition to any other sentence imposed that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court and that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device.

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CONTENT AND OPERATION

Background--offense of "menacing by stalking"

Existing law prohibits a person from doing any of the following (see **COMMENT 1** for definitions of the terms in quotation marks): (1) by engaging in a "pattern of conduct," knowingly causing another person to believe that the offender will cause physical harm to the other person or cause "mental distress" to the other person, (2) through the use of any electronic method of remotely transferring information, including, but not limited to, any "computer," "computer network," "computer program," or "computer system," "posting a message" with purpose to urge or incite another to commit a violation of the provision described in clause (1) of this paragraph, or (3) with a "sexual motivation," violating the provision described in clause (1) or (2) of this paragraph. A violation of this prohibition is the offense of "menacing by stalking." Menacing by stalking generally is a misdemeanor of the first degree, but it is a felony of the fourth or fifth degree if any of a list of specified aggravating circumstances is present. (R.C. 2903.211(A) and (B).)

Stalking/sex offense-related civil protection orders

Existing law

Existing law contains provisions that pertain to the issuance of a protection order, for the benefit of the complainant or alleged victim, when a person is charged with a violation that constitutes the offense of "menacing by stalking," as described above in "**Background**" (hereafter, a "menacing by stalking violation") or any of a list of other assault-related or menacing-related offenses and the alleged offense does not involve a family or household member. These provisions, set forth in R.C. 2903.213, are described in **COMMENT 2**. Existing law also contains provisions that pertain to the issuance of a civil protection order for the benefit of an alleged victim of a menacing by stalking violation or of a sexually oriented offense (hereafter, a "stalking/sex offense-related civil protection order").

Filing and content of petition for civil protection order. A person may seek relief under the provisions that pertain to the issuance of a stalking/sex offense-related civil protection order for the person, or any parent or adult household member may seek relief under those provisions on behalf of any other family or household member, by filing a petition with the court of common pleas of the county in which the person to be protected by the protection order resides. The petition must contain or state both of the following: (1) an allegation that the respondent engaged in a menacing by stalking violation against the person to be protected by the protection order or committed a sexually oriented offense against the person to be protected by the protection order, including a description of the nature and extent of the violation, and (2) a request for relief under the civil protection order provisions. (R.C. 2903.214(C).)

Hearings on petition and issuance of order. If a person who files a petition for a stalking/sex offense-related civil protection order requests an *ex parte* order, the court must hold an *ex parte* hearing as soon as possible after the petition is filed, but not later than the next day that the court is in session after it is filed. The court, for good cause shown at the *ex parte* hearing, may enter any temporary orders, with or without bond, that it finds necessary for the safety and protection of the person to be protected by the order. Immediate and present danger to the person to be protected by the order constitutes good cause for purposes of this provision. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the order with bodily harm or in which the respondent previously has been convicted of a menacing by stalking violation or a sexually oriented offense against the person to be protected by the order. If the court, after an *ex parte* hearing, issues a protection order as described in the next paragraph, the court must schedule a full hearing for a date that is within ten court days after the *ex*

parte hearing, must give the respondent notice of, and an opportunity to be heard at, the hearing, and must hold the hearing on the date scheduled unless it grants a continuance of the hearing. An *ex parte* order 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 or because the court grants a continuance. If a person who files a petition does not request an *ex parte* order, or if a person requests an *ex parte* order but the court does not issue one after an *ex parte* hearing, the court must proceed as in a normal civil action and grant a full hearing on the matter.

After an *ex parte* or full hearing, *the court may issue any protection order, with or without bond, that contains terms designed to ensure the safety and protection of the person to be protected by the order*, including, but not limited to, a requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member. If the court includes a requirement that the respondent refrain from entering the residence, school, etc., of the petitioner or family or household member in the order, it also must include in the order a statement that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant to enter the residence, school, etc., or by the alleged offender's entry into one of those places otherwise upon the consent of the petitioner or family or household member. No protection order issued pursuant to these provisions may in any manner affect title to any real property.

Any stalking/sex offense-related civil protection order is valid until a date certain, but not later than five years from the date of its issuance. The order may be renewed in the same manner as the original order was issued.

A court may not issue a stalking/sex offense-related 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 or to refrain from doing under the provisions described in the second preceding paragraph unless all of the following apply: (a) the respondent files a separate petition for a protection order, (b) the petitioner is served with notice of the respondent's petition at least 48 hours before the court holds a hearing with respect to the respondent's petition, or the petitioner waives the right to receive this notice, (c) if the petitioner has requested an *ex parte* order, the court does not delay any hearing required relative to such an order beyond the time specified in order to consolidate the hearing with a hearing on the petition filed by the respondent, and (d) after a full hearing at which the respondent presents evidence in support of the request for a protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed a menacing by stalking violation against the person to be protected by the order, has committed a sexually oriented offense against the person to be protected by the order, or has violated a protection order

issued pursuant to R.C. 2903.213 relative to the person to be protected by the order issued pursuant to this provision.

The court must cause the delivery of a copy of any stalking/sex offense-related civil protection order to the petitioner, to the respondent, and to all law enforcement agencies with jurisdiction to enforce the order. The court must direct that a copy of the order be delivered to the respondent on the same day it is entered. All law enforcement agencies must establish and maintain an index for the protection orders delivered to them and, with respect to each order so delivered, must note on the index the date and time that it received the order.

Any proceeding under these provisions is to be conducted in accordance with the Rules of Civil Procedure, except that a protection order may be obtained with or without bond. An order issued under these provisions, other than an *ex parte* order, that grants a protection order, or that refuses to grant a protection order, is a final, appealable order. The remedies and procedures provided in these provisions are in addition to, and not in lieu of, any other available civil or criminal remedies. In all stages of a proceeding under these provisions, a petitioner may be accompanied by a victim advocate.

Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or by a court of another state, no court or unit of state or local government may charge any fee, cost, deposit, or money in connection with the filing of a petition requesting a stalking/sex offense-related civil protection order, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining a certified copy of a protection order or consent agreement. (R.C. 2903.214(D) to (G), (J), and (L).)

Enforcement of order and sanctions for a violation. Regardless of whether the petitioner has registered the protection order in the county in which the officer's agency has jurisdiction pursuant to a specified procedure (see below), any officer of a law enforcement agency must enforce a stalking/sex offense-related civil protection order issued by any court in Ohio in accordance with the provisions of the order, including removing the respondent from the premises, if appropriate.

A person who violates a stalking/sex offense-related civil protection order is subject to criminal prosecution for a violation of R.C. 2919.27 (see "**Offense of 'violating a protection order'**," below), if the violation of the order constitutes a violation of that section, and to punishment for contempt of court. The punishment of a person for contempt of court for violation of the protection order does not bar criminal prosecution of the person for a violation of R.C. 2919.27; however, a person punished for contempt of court is entitled to credit for the

punishment imposed upon conviction of a violation of that section, and a person convicted of a violation of that section cannot subsequently be punished for contempt of court arising out of the same activity.

A petitioner who obtains a stalking/sex offense-related civil protection order or a protection order under R.C. 2903.213 may provide notice of the issuance or approval of the order to the judicial and law enforcement officials in any county other than the county in which the order is issued by registering that order in the other county, in the manner described below, and filing a copy of the registered order with a law enforcement agency in the other county. A petitioner may register the protection order in a county other than the county in which the court that issued the order is located in the following manner: (1) the petitioner 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, municipal court, or county court in the county in which the order is to be registered, and (2) upon accepting the certified copy of the order for registration, the recipient clerk must place an endorsement of registration on the order and give the petitioner a copy of the order that bears that proof of registration. The clerk of each court of common pleas, municipal court, or county court must maintain a registry of certified copies of protection orders that have been issued by courts in other counties and that have been registered with the clerk. A person who obtains a protection order issued by a court of another state may provide notice of the issuance of the order to the judicial and law enforcement officials in any county of this state by registering the order in that county pursuant to a procedure specified in R.C. 2919.272 and filing a copy of the registered order with a law enforcement agency in that county. (R.C. 2903.214(F)(3), (K), and (M).)

Operation of the bill

The bill requires a court that makes certain findings at a full hearing on a petition for a stalking/sex offense-related civil protection order to order that the respondent be subjected to "electronic monitoring" in a specified manner. Specifically, it provides that:

(1) After a full hearing, if the court finds upon clear and convincing evidence that a person who files a petition for a stalking/sex offense-related civil protection order reasonably believed that the respondent's conduct over the course of the year preceding the filing of the petition endangered the health, welfare, or safety of the person to be protected and that the respondent presents a continuing danger to that person, the court must order that the respondent be electronically monitored for a period of time and under the terms and conditions that the court determines are appropriate. Electronic monitoring will be in addition to any other relief granted to the petitioner. (R.C. 2903.214(E)(1)(b).)

(2) If a person who files a petition for a stalking/sex offense-related civil protection order seeks relief in the form of electronic monitoring of the respondent, in addition to the allegation and request that existing law requires to be contained or stated in the petition, the petition also must contain or state an allegation that, for a period of more than one year preceding the filing of the petition, the respondent engaged in conduct that would cause a reasonable person to believe that the health, welfare, or safety of the person to be protected was at risk, a description of the nature and extent of that conduct, and an allegation that the respondent presents a continuing danger to the person to be protected (R.C. 2903.214(C)(2)).

(3) If the court orders electronic monitoring of the respondent in a stalking/sex offense-related civil protection order, the court must direct the sheriff's office or any other appropriate law enforcement agency to install the electronic monitoring device and to monitor the respondent and must order the respondent to pay the cost of the installation and monitoring of the electronic monitoring device (R.C. 2903.214(N)).

(4) As used in the provisions regarding stalking/sex offense-related civil protection orders, "electronic monitoring" means monitoring through the use of an electronic monitoring device (R.C. 2903.214(A)(6), by reference to existing R.C. 2929.01, which is not in the bill). As used in the definition of "electronic monitoring," "electronic monitoring device" means any of the following (existing R.C. 2929.01, not in the bill):

(a) Any device that can be operated by electrical or battery power and that conforms with all of the following: (i) the device has a transmitter that can be attached to a person, that will transmit a specified signal to a receiver of the type described in clause (ii) of this paragraph if the transmitter is removed from the person, turned off, or altered in any manner without prior court approval in relation to electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with, that can transmit continuously and periodically a signal to that receiver when the person is within a specified distance from the receiver, and that can transmit an appropriate signal to that receiver if the person to whom it is attached travels a specified distance from that receiver, (ii) the device has a receiver that can receive continuously the signals transmitted by a transmitter of the type described in clause (i) of this paragraph, can transmit continuously those signals by telephone to a central monitoring computer of the type described in clause (iii) of this paragraph, and can transmit continuously an appropriate signal to that central monitoring computer if the receiver is turned off or altered without prior court approval or otherwise tampered with, and (iii) the device has a central monitoring

computer that can receive continuously the signals transmitted by telephone by a receiver of the type described in clause (ii) of this paragraph and can monitor continuously the person to whom an electronic monitoring device of the type described in clause (i) of this paragraph is attached.

(b) Any device that is not a device of the type described in the preceding paragraph and that conforms with all of the following: (i) the device includes a transmitter and receiver that can monitor and determine the location of a subject person at any time, or at a designated point in time, through the use of a central monitoring computer or through other electronic means, and (ii) the device includes a transmitter and receiver that can determine at any time, or at a designated point in time, through the use of a central monitoring computer or other electronic means the fact that the transmitter is turned off or altered in any manner without prior approval of the court in relation to the electronic monitoring or without prior approval of the department of rehabilitation and correction in relation to the use of an electronic monitoring device for an inmate on transitional control or otherwise is tampered with.

(c) Any type of technology that can adequately track or determine the location of a subject person at any time and that is approved by the director of rehabilitation and correction, including, but not limited to, any satellite technology, voice tracking system, or retinal scanning system that is so approved.

Offense of "violating a protection order"

Existing law

Existing law prohibits a person from recklessly violating the terms of a stalking/sex offense-related civil protection order, as described above in "**Stalking/sex offense-related civil protection orders.**" The prohibition also prohibits a person from recklessly violating the terms of: (1) a protection order issued under the provisions described in **COMMENT 2** after a person is charged with a menacing by stalking violation or any of a list of other assault-related or menacing-related offenses and the alleged offense does not involve a family or household member, (2) a protection order issued or consent agreement approved pursuant to R.C. 2919.26 regarding an offense of violence or other specified offense committed against a family or household member or R.C. 3113.31 regarding an act of domestic violence, or (3) a protection order issued by a court of another state. It is an affirmative defense to a charge based on a violation of the third clause of this prohibition that the protection order issued by a court of another state does not comply with the requirements specified in 18 U.S.C. 2265(b) for a protection order that must be accorded full faith and credit by an Ohio court or that it is not entitled to full faith and credit under 18 U.S.C. 2265(c).

A violation of the prohibition described in the preceding paragraph is the offense of "violating a protection order." Violating a protection order generally is a misdemeanor of the first degree, but it is: (1) a felony of the fifth degree if the offender previously has been convicted of a violation of a stalking/sex offense-related civil protection order, as described above in "*Stalking/sex offense-related civil protection order*," a violation of a protection order issued under the provisions described in **COMMENT 2**, two or more menacing by stalking violations or offenses of "aggravated menacing," "menacing," or "aggravated trespass" that involved the same person who is the subject of the protection order or consent agreement, or one or more offenses of "violating a protection order," and (2) a felony of the third degree if the offender violates a protection order or consent agreement while committing a felony offense.

Operation of the bill

The bill provides that, if an offender commits the offense of violating a protection order and the protection order violated by the offender was a stalking/sex offense-related civil protection order the court may require in addition to any other sentence imposed upon the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court and that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device.

COMMENT

1. Existing R.C. 2903.211(D), which is not in the bill, provides that, as used in R.C. 2903.211:

(a) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

(b) "Mental distress" means any of the following: (i) any mental illness or condition that involves some temporary substantial incapacity, or (ii) any mental

illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

(c) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses; "computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature (by reference to existing R.C. 2913.01, not in the bill).

(d) "Computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities (by reference to existing R.C. 2913.01, not in the bill).

(e) "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data (by reference to existing R.C. 2913.01, not in the bill).

(f) "Computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks (by reference to existing R.C. 2913.01, not in the bill).

(g) "Telecommunications device" means any instrument, equipment, machine, or other device that facilitates "telecommunication," including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem. "Telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method. (By reference to existing R.C. 2913.01, not in the bill.)

(h) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.

(i) "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender (by reference to existing R.C. 2971.01, not in the bill).

2. Existing R.C. 2903.213, not in the bill, provides that, except when the complaint involves a person who is a family or household member as defined in R.C. 2919.25, upon the filing of a complaint that alleges a violation of R.C. 2903.11, 2903.12, 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211, a violation of a municipal ordinance substantially similar to R.C. 2903.13, 2903.21, 2903.211, 2903.22, or 2911.211, or the commission of a sexually oriented offense (as defined in the Sex Offender Registration and Notification Law), the complainant, the alleged victim, or a family or household member of an alleged victim may file a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender, in addition to any bail. The motion must be filed, in a specified form, with the clerk of the court with jurisdiction of the case at any time after the filing of the complaint.

As soon as possible after the filing of such a motion, but not later than the next day that the court is in session after the filing of the motion, the court must conduct a hearing to determine whether to issue the order. The person who requested the order must appear before the court and provide it with the information it requests concerning the basis of the motion. If the court finds that the safety and protection of the complainant or the alleged victim may be impaired by the continued presence of the alleged offender, the court may issue a protection order, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the complainant or the alleged victim, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the complainant or the alleged victim. If the court issues a protection order that includes a requirement that the alleged offender refrain from entering the residence, school, etc., of the complainant or the alleged victim, the order must clearly state that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant, the alleged victim, or a family or household member to enter the residence, school, etc., or by the alleged offender's entry into one of those places otherwise upon the consent of the complainant, the alleged victim, or a family or household member.

Except when the complaint involves a person who is a family or household member, upon the filing of a complaint that alleges a violation specified in the second preceding paragraph, the court, upon its own motion, may issue a protection order as a pretrial condition of release of the alleged offender if it finds that the safety and protection of the complainant or the alleged victim may be impaired by the continued presence of the alleged offender. If the court issues a protection order as an *ex parte* order, it must conduct, as soon as possible after the issuance of the order but not later than the next day that the court is in session after

its issuance, a hearing (under the standards described in the preceding paragraph) to determine whether the order should remain in effect, be modified, or be revoked.

If a municipal court or a county court issues a protection order under these provisions and if, subsequent to the issuance of the order, the alleged offender who is the subject of the order is bound over to the court of common pleas for prosecution of a felony arising out of the same activities as those that were the basis of the complaint upon which the order is based, the order remains in effect, as though it were an order of the court of common pleas, while the charges against the alleged offender are pending in the court of common pleas, for the period of time described in the next paragraph, and the court of common pleas has exclusive jurisdiction to modify the order.

A protection order issued under these provisions: (1) is in addition to, but is not construed as a part of, any bail, (2) is effective only until the disposition, by the court that issued the order or, if the alleged offender who is the subject of the order is bound over for prosecution to the court of common pleas, by that court of common pleas, of the criminal proceeding arising out of the complaint upon which the order is based or until the issuance of a stalking/sex offense-related civil protection order under R.C. 2903.214 arising out of the same activities as those that were the basis of the complaint, and (3) cannot be construed as a finding that the alleged offender committed the alleged offense and cannot be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

A copy of a protection order issued under these provisions must be issued by the court to the complainant, to the alleged victim, to the person who requested the order, to the defendant, and to all law enforcement agencies with jurisdiction to enforce the order. If the order is issued by a municipal court or county court and the defendant who is the subject of the order is bound over to the court of common pleas for prosecution, the municipal court or county court must direct that a copy be delivered to the court of common pleas. All law enforcement agencies must establish and maintain an index for the protection orders so delivered to the agencies and must note on the index the date and time of the agency's receipt of the order.

Regardless of whether the petitioner has registered the protection order in the county in which the officer's agency has jurisdiction, any officer of a law enforcement agency must enforce a protection order issued pursuant to these provisions in accordance with the provisions of the order. Upon a violation of a protection order issued pursuant to these provisions, the court may issue another protection order under them, as a pretrial condition of release, that modifies the terms of the order that was violated.

Notwithstanding any provision of law to the contrary and regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or by a court of another state, no court or unit of state or local government may charge any fee, cost, deposit, or money in connection with the filing of a motion requesting the issuance of a protection order pursuant to these provisions, in connection with the filing, issuance, registration, or service of a protection order or consent agreement, or for obtaining certified copies of a protection order or consent agreement.

HISTORY

ACTION	DATE
Introduced	10-24-07

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