



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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- Reps.** Sykes and Manning, Riedel, O'Brien, Kent, Craig, Lanese, Boyd, R. Smith, Hill, Ashford, Dever, Holmes, Leland, McColley, Perales, G. Johnson, Antonio, West, Cera, Rogers, Retherford, Sheehy, Pelanda, Ramos, Butler, Henne, Boccieri, Sprague, Boggs, Fedor, Householder, DeVitis, Celebrezze, Rezabek, Anielski, Arndt, Brenner, Carfagna, Clyde, Cupp, Duffey, Edwards, Gavarone, Green, Greenspan, Hagan, Hambley, Howse, Ingram, Kelly, Koehler, Landis, Lepore-Hagan, Miller, Patterson, Reece, Reineke, Ryan, Scherer, Slaby, K. Smith, Stein, Strahorn, Sweeney
- Sens.** Eklund, Bacon, Balderson, Beagle, Brown, Burke, Coley, Gardner, Hackett, Hoagland, Hottinger, Huffman, Jordan, Kunze, LaRose, Lehner, Manning, Obhof, Oelslager, Peterson, Schiavoni, Skindell, Sykes, Tavares, Terhar, Thomas, Uecker, Williams, Wilson, Yuko

Effective date: July 6, 2018

ACT SUMMARY

- Expands the law governing domestic violence civil protection orders (DVCPOs) to authorize a court to issue an order (or approve a consent agreement) to protect a "person alleging dating violence with whom the respondent is or was in a dating relationship" from domestic violence by the respondent.
- Applies the procedures regarding the issuance and enforcement of a DVCPO to dating relationship DVCPOs.
- Requires the Attorney General to include in the crime victims' bill of rights pamphlet notice of the right of a petitioner alleging domestic violence in a dating relationship to seek a DVCPO.
- For purposes of the funding mechanism for domestic violence shelters, includes persons who are victims of domestic violence in dating relationships.
- In the notice provided to the parties to a DVCPO, consent agreement, or another type of protection order that it may be unlawful under federal law to possess or

purchase a firearm or ammunition, specifies that the possible ban is for the duration of the order or agreement.

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CONTENT AND OPERATION

Domestic violence civil protection order for petitioner in dating relationship

Overview

The act expands the law governing the issuance of domestic violence civil protection orders (DVCPOs) to authorize a common pleas court to issue such a civil protection order (or approve a consent agreement) to protect a "person with whom the respondent is or was in a dating relationship" from domestic violence by the respondent. The procedures for the issuance of a DVCPO under continuing law apply with respect to a dating relationship DVCPO under the act.

Definitions¹

Preexisting law defines as "**domestic violence**," with respect to DVCPOs, certain conduct committed against a family or household member. The act expands the definition to define that same conduct as domestic violence if it is committed against a

¹ R.C. 3113.31(A).

"person with whom the respondent is or was in a dating relationship" (see below). The conduct that constitutes domestic violence is one of more of the following acts:

(1) Attempting to cause or recklessly causing bodily injury;

(2) Placing another person by threat of force in fear of imminent serious physical harm or committing a violation under the offense of either "menacing by stalking"² or "aggravated trespass";³

(3) Committing any act with respect to a child that would result in the child being an abused child, as defined in the Juvenile Code;⁴ or

(4) Committing a sexually oriented offense, as defined in the Sex Offender Registration and Notification Law.⁵

The act defines "**person with whom the respondent is or was in a dating relationship**" to mean an adult who (1) at the time of the conduct in question, is in a dating relationship with the respondent who also is an adult, or (2) within the 12 months preceding the conduct in question, has had a dating relationship with the respondent who also is an adult.

The act defines "**dating relationship**" to mean a relationship between individuals who have, or have had, a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context.

Petition for protection order

The act authorizes a person with whom the respondent is or was in a dating relationship to seek relief under the DVCPO provisions by filing a petition with the domestic relations division of the common pleas court, or the common pleas court in counties without a domestic relations division. The court has jurisdiction with respect to all proceedings on the petition.⁶ The petition must include:⁷

² R.C. 2903.211, not in the act.

³ R.C. 2911.211, not in the act.

⁴ R.C. 2151.031, not in the act.

⁵ R.C. 2950.01, not in the act.

⁶ R.C. 3113.31(A) to (C).

⁷ R.C. 3113.31(C).



- An allegation that the respondent engaged in domestic violence against a person with whom the respondent is or was in a dating relationship, including a description of the nature and extent of the domestic violence;
- The relationship of the respondent to the petitioner;
- The facts upon which the court may conclude that a dating relationship existed between the person to be protected and the respondent;
- A request for DVCPO relief.

***Ex parte* order**

Under certain circumstances specified in continuing law, *ex parte* DVCPOs for the protection of a person who is a family or household member of the respondent may be issued. Generally, an *ex parte* hearing is one in which only one party is heard. The act extends those provisions to also apply with respect to the protection of a person with whom the respondent is or was in a dating relationship.

Under the act, if a petitioner requests an *ex parte* order with respect to a dating relationship, the court must hold an *ex parte* hearing on the same day that the petition is filed. The court, for good cause shown, may enter any temporary orders, with or without bond, necessary to protect the person with whom the respondent is or was in a dating relationship from domestic violence.

"Immediate and present danger" of domestic violence constitutes good cause. Immediate and present danger includes situations in which the respondent has threatened that person with bodily harm or a sexually oriented offense, or in which the respondent previously has been convicted of or been adjudicated a delinquent child for an offense that constitutes domestic violence against the person with whom the respondent is or was in a dating relationship.⁸

An *ex parte* order does not expire because of failure to serve the respondent notice of the full hearing (see below) before the date set for that hearing, or because the court grants a continuance of the hearing.⁹

Full hearing

If the court, after an *ex parte* hearing, issues any protection order granting relief (see "**Relief**," below), it must schedule a full hearing, with notice to the respondent and

⁸ R.C. 3113.31(D)(1).

⁹ R.C. 3113.31(D)(2)(b).

an opportunity to be heard, for a date that is within ten court days after the *ex parte* hearing. The court must hold the full hearing as scheduled, unless it grants a continuance for any of the following reasons:¹⁰

- The respondent was not served, prior to the date of the full hearing, with the petition and notice of the full hearing;
- The parties consent to the continuance;
- The continuance is needed to allow a party to obtain counsel;
- The continuance is needed for other good cause.

If a petitioner does not request an *ex parte* order, or if a petitioner 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.¹¹

Procedure

Any proceeding with respect to a petition for protection of a person with whom the respondent is or was in a dating relationship must be conducted in accordance with the Rules of Civil Procedure, except that a DVCPO may be obtained with or without bond. An order with respect to the petition, other than an *ex parte* order, that grants or denies an application for a DVCPO, approval of a consent agreement, or modification or termination of a protection order or consent agreement is a final, appealable order.¹²

In all stages of a proceeding with respect to the petition, a petitioner may be accompanied by a victim advocate (a person who provides support and assistance for the petitioner).¹³

Remedies

Against respondent

After an *ex parte* or full hearing, the court may grant any DVCPO, with or without bond, or approve any consent agreement to bring about a cessation of domestic

¹⁰ R.C. 3113.31(D)(2)(a).

¹¹ R.C. 3113.31(D)(3).

¹² R.C. 3113.31(G).

¹³ R.C. 3113.31(A)(5) and (M).



violence against the persons with whom the respondent is or was in a dating relationship. The DVCPO or agreement may:¹⁴

- Direct the respondent to refrain from abusing or from committing sexually oriented offenses against the persons with whom the respondent is or was in a dating relationship;
- Require the respondent or the petitioner with whom the respondent is or was in a dating relationship to seek counseling;
- Require the respondent to refrain from entering the petitioner's residence, school, business, or place of employment;
- Require that the respondent not remove, damage, hide, harm, or dispose of any companion animal owned or possessed by the petitioner;
- Authorize the petitioner to remove a companion animal owned by the petitioner from the respondent's possession;
- If the respondent shares a wireless service plan with the petitioner, require a wireless service transfer directing the wireless service provider to transfer the rights to, and billing responsibility for, the wireless service number to the petitioner;
- Grant other relief that the court considers equitable and fair, including ordering the respondent to permit the petitioner to use a motor vehicle.

If a DVCPO was issued in a prior action involving the respondent and the petitioner, the court may include in a DVCPO a prohibition against the respondent returning to the residence, school, business, or place of employment.¹⁵

A dating relationship DVCPO issued, or consent agreement approved, by the court remains valid until a date certain, but not later than five years from the date of issuance or approval, unless modified or terminated (see "**Termination and modification**," below). A DVCPO or consent agreement may be renewed in the same manner in which the original order was issued or consent agreement was approved.¹⁶

¹⁴ R.C. 3113.31(E)(1) and (A)(7), by reference to R.C. 959.131, not in the act.

¹⁵ R.C. 3113.31(E)(2) and (7).

¹⁶ R.C. 3113.31(E)(3).



If a DVCPO or consent agreement requires the respondent to refrain from entering the petitioner's residence, school, business, or place of employment, the order or agreement must state clearly that it cannot be waived or nullified by the petitioner's invitation to the respondent to enter the residence, school, business, or place of employment or by the respondent's entry otherwise upon the petitioner's consent. This provision does not limit the court's discretion to determine that a respondent charged with a criminal offense of "violating a protection order,"¹⁷ a violation of a substantially equivalent municipal ordinance, or contempt of court, for an alleged violation of a DVCPO or consent agreement did not commit the violation or was not in contempt of court.¹⁸

Against petitioner

A court may not issue a dating relationship DVCPO 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 (see "**Against respondent**," above), unless all of the following apply:¹⁹

- The respondent files a separate petition for a DVCPO;
- The petitioner is served 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 the notice;
- If the petitioner has requested an *ex parte* order, the court does not delay any hearing regarding that request in order to consolidate the hearing with a hearing on the respondent's petition;
- After a full hearing at which the respondent presents evidence in support of the request for a DVCPO and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed an act of domestic violence or has violated a temporary protection order that both the petitioner and the respondent acted primarily as aggressors, and that neither acted primarily in self-defense.

¹⁷ R.C. 2919.27, not in the act.

¹⁸ R.C. 3113.31(E)(7).

¹⁹ R.C. 3113.31(E)(4).



Nonexclusivity

The remedies and procedures provided by the act are in addition to, and not in lieu of, any other available civil or criminal remedies.²⁰

Modification and termination of protection order

The act authorizes a court that issues a DVCPO or approves a consent agreement under its provisions to modify or terminate the order or agreement. Either the petitioner or the respondent may bring a motion for modification or termination. Notice of the motion must be given in accordance with the Civil Rules. If the petitioner has requested that the petitioner's address be kept confidential, the court may not disclose the address to the respondent or anyone else, except as otherwise required by law. The moving party has the burden of proving, by a preponderance of the evidence, that modification or termination is appropriate either because the order or agreement is no longer needed or because its terms are no longer appropriate. If the respondent moves for modification or termination and the court denies the motion, it may assess costs against the respondent.²¹

In considering whether to modify or terminate a DVCPO or consent agreement, the court must consider all relevant factors, including:²²

- Whether the petitioner consents to modification or termination;
- Whether the petitioner fears the respondent;
- The current nature of their relationship;
- The circumstances of the petitioner and respondent, including the relative proximity of their workplaces and residences and whether they have minor children together;
- Whether the respondent has complied with the terms and conditions of the original order or agreement;
- Whether the respondent has a continuing involvement with illegal drugs or alcohol;

²⁰ R.C. 3113.31(G).

²¹ R.C. 3113.31(E)(8)(a), (b), and (e).

²² R.C. 3113.31(E)(8)(c).



- Whether the respondent has been convicted of an offense of violence since the issuance of the order or approval of the agreement;
- Whether any other protection orders, consent agreements, restraining orders, or no contact orders have been issued against the respondent under the law of Ohio or any other state;
- Whether the respondent has participated in any domestic violence treatment, intervention program, or other counseling addressing domestic violence and whether the respondent has completed it;
- The time elapsed since the order was issued or the agreement was approved;
- The respondent's age and health;
- When the last incident of abuse, threat of harm, or commission of a sexually oriented offense occurred, or other relevant information concerning the safety and protection of the petitioner or other protected parties.

Fees and costs

In general, regardless of whether a DVCPO is issued or a consent agreement is approved by a court of another county or state, continuing law unchanged by the act prohibits any court or unit of state or local government from charging a petitioner any fee, cost, deposit, or money in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal, or service of a DVCPO, consent agreement, or witness subpoena or for obtaining a certified copy of a DVCPO or consent agreement. However, whether or not a DVCPO is issued or a consent agreement is approved, the court may assess those costs against the respondent. Also, if the respondent under a DVCPO or consent agreement moves for its modification or termination, and the court denies the motion, the court may assess costs against the respondent for filing the motion.²³

Offense of "violating a protection order" and contempt of court

A person who recklessly violates terms of a dating relationship DVCPO or consent agreement is guilty of "violating a protection order," generally a first degree

²³ R.C. 3113.31(E)(8)(e) and (J).

misdemeanor but a third or fifth degree felony in specified circumstances. The person also is subject to punishment for contempt of court.²⁴

Law enforcement responsibility to provide information

Continuing law requires any law enforcement agency that investigates a domestic dispute to provide the family or household members involved with information about the relief available under a DVCPO. The act specifies that this information must also be provided to persons in a dating relationship who are involved in a domestic dispute.²⁵

Victims' bill of rights pamphlet

Continuing law requires the Attorney General to prepare and distribute a pamphlet that explains the statutory rights of crime victims. Prosecutors handling a criminal case and law enforcement officers investigating a criminal or delinquency case generally must provide a copy of the pamphlet to the victim, victim's family, or victim's dependents on first contact. The act adds to the list of rights that must be explained the right of a petitioner alleging domestic violence in a dating relationship to seek a DVCPO.²⁶

Access to funded domestic violence shelters

The Revised Code sets forth a funding mechanism for shelters for victims of domestic violence. In the sections that deal with that mechanism, the law defines "domestic violence" and "shelter for victims of domestic violence" as pertaining to conduct against family or household members. The act expands those definitions to also include that conduct occurring in a dating relationship. The effect is to include victims of dating relationship domestic violence within the scope of the shelter provisions, clarifying that they have access to the shelters and the shelters serving them have access to the public funding. (The funding consists of \$17 fees for marriage licenses and \$32 fees for annulments, divorces, and dissolutions.)²⁷

²⁴ R.C. 2919.27(A) and (B), not in the act, and R.C. 3113.31(L).

²⁵ R.C. 3113.31(I).

²⁶ R.C. 109.42.

²⁷ R.C. 3113.33. See also R.C. 3113.34 to 3113.40, not in the act.



Protection orders and firearms warning

Types of orders

Continuing law provides for issuing the following types of protection orders:

(1) A juvenile court protection order against a person under age 18 who allegedly committed a specified assault or menacing offense or aggravated trespass, a sexually oriented offense, or a substantially equivalent municipal ordinance violation against the person to be protected by the order;²⁸

(2) A civil protection order against a person: (a) age 18 or older who allegedly committed menacing by stalking or a sexually oriented offense,²⁹ or (b) as a DVCPO, who allegedly has engaged in domestic violence (including any sexually oriented offense) against a specified family or household member or, under the act's provisions, against a person in a dating relationship;³⁰

(3) A criminal protection order against a person: (a) charged with a specified assault or menacing offense or aggravated trespass, a substantially equivalent municipal ordinance violation, or a sexually oriented offense against a victim who is not a family or household member of the offender,³¹ or (b) charged with criminal damaging or endangering, criminal mischief, burglary, or aggravated trespass, a municipal ordinance violation that is substantially similar to any of those offenses, an offense of violence (including domestic violence), or a sexually oriented offense against an alleged victim who was a family or household member.³²

Notice of possible firearm and ammunition restriction

Under continuing law, when the court issues an order or approves a consent agreement of the type described above in (1), (2)(a) or (b), or (3)(b), it must provide the parties with oral or written notice, using specified language, that as a result of the order or agreement it may be unlawful under federal law for one or both parties to possess or purchase a firearm or ammunition. The act expands that language to require that it

²⁸ R.C. 2151.34.

²⁹ R.C. 2903.214.

³⁰ R.C. 3113.31.

³¹ R.C. 2903.213, not in the act.

³² R.C. 2919.26.



specify that the restriction against possessing or purchasing a firearm or ammunition is for the duration of the order or agreement.³³

HISTORY

ACTION	DATE
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³³ R.C. 2151.34(F)(2), 2903.214(F)(2), 2919.26(G)(2), and 3113.31(F)(2).

