



# Ohio Legislative Service Commission

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## Bill Analysis

Aida S. Montano

### S.B. 76

131st General Assembly  
(As Passed by the Senate)

**Sens.** Bacon and Manning, Beagle, Brown, Cafaro, Hughes, Jones, Oelslager, Patton, Seitz, Thomas, LaRose, Obhof, Burke, Coley, Eklund, Faber, Gentile, Hite, Peterson, Sawyer, Schiavoni, Uecker, Widener, Yuko

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## BILL SUMMARY

- Provides that if a person is charged with violating a protection order or a civil domestic violence consent agreement, service of the protection order (or consent agreement) on the person is not required to prove the offense of "violating a protection order" if the prosecution proves that the person had actual notice that there was a protection order (or consent agreement) and proves that the person recklessly violated the terms of the order (or agreement).
- Declares that the intent in enacting the previously described provision is to supersede the holding in *State v. Smith* (2013), 136 Ohio St.3d 1, so that unperfected service of a protection order (or consent agreement) does not preclude a prosecution for "violating a protection order."
- Expands the circumstances in which the offense of "violating a protection order" is expressly classified as a fifth degree felony.

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## CONTENT AND OPERATION

### Introduction

Continuing law provides mechanisms for the issuance of several types of protection orders. This analysis uses a shorthand method of referring to each of those types of protection orders that is based on the court that issues the order or the main context in which the order may be issued.

## Offense of "violating a protection order"

### Prohibition and service of a protection order or consent agreement

The bill expands the circumstances in which the offense of "violating a protection order" applies to a person by stating that service of a protection order (or consent agreement) is not required to prove a violation under the offense if the prosecution proves the person's actual notice of the order (or agreement) and the person's reckless violation of its terms.<sup>1</sup> Existing law prohibits a person from recklessly violating the terms of a protection order or a civil domestic violence consent agreement. A violation of the prohibition is the offense of "violating a protection order."<sup>2</sup>

In *State v. Smith* (2013), 136 Ohio St.3d 1, the Ohio Supreme Court held that a person could not be convicted of the offense of "violating a protection order" based on the person's reckless violation of a civil stalking protection order (issued under R.C. 2903.214) unless the order had been "served" on the person before the alleged violation. The Court determined that R.C. 2903.214 requires that the order be served on the person to whom it applies and that the prohibition in the offense incorporates that requirement as an element of the offense. The bill includes a provision declaring that the intent in making the change described above is to supersede the Court's holding in *Smith* so that unperfected service of a protection order (or consent agreement) does not preclude a prosecution under the offense of "violating a protection order."<sup>3</sup>

### Penalty

The bill expands the circumstances in which "violating a protection order" is expressly classified as a fifth degree felony. Under the bill, in addition to the current law circumstances in which the offense is a fifth degree felony, it also is expressly classified as a fifth degree felony if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for any of the following:

- A violation of a civil domestic violence protection order (R.C. 3113.31);
- A violation of a consent agreement establishing a juvenile court protection order (R.C. 2151.34), criminal stalking protection order (R.C. 2903.213), civil stalking protection order (R.C. 2903.214), or civil domestic violence protection order (note that only the last of those types of orders expressly provides for consent agreements);

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<sup>1</sup> R.C. 2919.27(D).

<sup>2</sup> R.C. 2919.27(A) and (B)(1).

<sup>3</sup> Section 3 of the bill.



- Any combination of offenses of aggravated menacing, menacing by stalking, menacing, or aggravated trespass that involved the same person who is the subject of the protection order or consent agreement.<sup>4</sup>

Note that the circumstances identified in the first two dot points appear to be fifth degree felonies under existing law. Under existing law, "violating a protection order" generally is a misdemeanor of the first degree, but it is a third or fifth degree felony in specified circumstances. The offense is a fifth degree felony if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for: (1) a violation of a juvenile court protection order, a criminal stalking protection order, or a civil stalking protection order (neither existing law nor the bill includes in this provision a reference to a criminal domestic violence protection order – R.C. 2919.26), (2) two or more offenses of aggravated menacing, menacing by stalking, menacing, or aggravated trespass that involved the same person who is the subject of the protection order or consent agreement, or (3) one or more offenses of violating a protection order. The offense is a third degree felony if the offender violates a protection order or consent agreement while committing a felony offense. Existing law also authorizes the court to require electronic monitoring of the offender for a period not exceeding five years by a law enforcement agency designated by the court.<sup>5</sup>

## HISTORY

ACTION	DATE
Introduced	02-23-15
Reported, S. Criminal Justice	09-30-15
Passed by Senate (32-0)	09-30-15

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<sup>4</sup> R.C. 2919.27(B)(3).

<sup>5</sup> R.C. 2919.27(B)(2) to (5).

