



# Ohio Legislative Service Commission

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## Bill Analysis

Dennis M. Papp

### Sub. H.B. 392

131st General Assembly  
(As Passed by the House)

**Reps.** Sykes and Kuhns, Bishoff, Butler, Clyde, DeVitis, Driehaus, Fedor, Howse, K. Smith, Lepore-Hagan, Ramos, Reece, Sheehy, Stinziano, G. Johnson, Boggs, Dever, McColley, Anielski, Antonio, Arndt, Ashford, Baker, Barnes, Boccieri, Boyd, Brenner, Brown, Buchy, Burkley, Celebrezze, Cera, Conditt, Craig, Curtin, Derickson, Dovilla, Duffey, Ginter, Hall, Hambley, Kunze, Landis, Leland, Manning, McClain, M. O'Brien, S. O'Brien, Patmon, Patterson, Pelanda, Perales, Phillips, Reineke, Rogers, Romanchuk, Ryan, R. Smith, Sprague, Strahorn, Sweeney, Thompson, Young

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## BILL SUMMARY

- Authorizes the appropriate division of a court of common pleas to issue a civil dating violence protection order for a petitioner alleging dating violence against a person who commits dating violence.
- Establishes procedures governing petitions for dating violence protection orders, hearings, the issuance of *ex parte* orders and final orders and approval of consent agreements, and the modification and termination of orders and agreements.
- Provides that a person who violates a dating violence protection order or consent agreement is guilty of the offense of "violating a protection order."
- Requires every law enforcement agency to maintain an index of dating violence protection orders and consent agreements provided by the courts, to enforce all of those orders and agreements, and to provide potential petitioners alleging dating violence involved in disputes in a dating relationship with information about the relief available under the bill.
- Authorizes the registration of dating violence protection orders and consent agreements in counties other than the county in which the order was issued or the agreement was approved.

- Requires the Attorney General to include in the crime victims' bill of rights pamphlet notice of the right of a petitioner alleging dating violence to seek a protection order.
- Provides a person in a dating relationship with the person committing dating violence and who is the victim of that dating violence with access to domestic violence shelters.

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## CONTENT AND OPERATION

### Protection order for petitioner alleging dating violence

The bill authorizes the division of a court of common pleas having jurisdiction over domestic relations, or the juvenile division if the respondent is less than 18 years old, to issue a civil protection order (or approve a consent agreement) to protect a "petitioner alleging dating violence" or "person alleging dating violence" (a person who has or has had a dating relationship with the respondent within the 12 months preceding the conduct in question) from dating violence by the respondent. The existence of a dating relationship between the parties is determined based on either an expectation of affection between them in their relationship or a frequency and interaction between them indicating involvement over time and on a continuous basis. A person who has had only a casual relationship with, or who has engaged solely in ordinary fraternization in a business or social context with, the specified respondent is

not a "petitioner alleging dating violence" or a "person alleging dating violence" for these purposes.<sup>1</sup> "Dating violence" means the occurrence of one or more of the following against a petitioner alleging dating violence:<sup>2</sup>

- Attempting to cause or recklessly causing bodily injury;
- Placing the petitioner alleging dating violence by the threat of force in fear of imminent serious physical harm or committing menacing by stalking or aggravated trespass;
- Committing a sexually oriented offense, as defined by existing law.

The bill's provisions regarding the dating violence protection orders are separate from, and independent of, existing provisions that pertain to the issuance of protection orders in specified circumstances (see "**Existing protection orders**," below).

### **Petition for protection order**

The bill authorizes a petitioner alleging dating violence or a parent or adult household member of a person alleging dating violence to seek relief on that person's behalf by filing a petition with the court described above. The petition must include the following:<sup>3</sup>

- An allegation of dating violence by the respondent against the petitioner, including a description of the nature and extent of the dating violence;
- A statement of the relationship of the respondent to the petitioner alleging dating violence, and to the person alleging dating violence if other than the petitioner filing the petition;
- A request for relief.

### ***Ex parte* order**

Under the bill, if a petitioner requests an *ex parte* order, 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 petitioner alleging dating violence from any dating violence, including an order directing the respondent to refrain from abusing or from committing sexually oriented

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<sup>1</sup> R.C. 3113.311(A) and 2151.23(A)(16) and (J).

<sup>2</sup> R.C. 3113.311(A)(1), and R.C. 2950.01, not in the bill, by reference.

<sup>3</sup> R.C. 3113.311(B) and (C).



offenses against the petitioner alleging dating violence. "Immediate and present danger" of dating violence to the petitioner alleging dating violence constitutes good cause. Immediate and present danger includes situations in which the respondent has threatened that petitioner 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 dating violence against the petitioner alleging dating violence.<sup>4</sup>

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 of the hearing.<sup>5</sup>

### **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 an opportunity to be heard, for a date not later than ten court days after the *ex parte* hearing. The court must hold the full hearing as scheduled, unless it grants a continuance of the hearing for any of the following reasons:<sup>6</sup>

- The respondent was not served with the petition and notice of the full hearing in a timely manner;
- 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 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.<sup>7</sup>

### **Procedure**

Any proceeding under the bill must be conducted in accordance with the Rules of Civil Procedure, except that a protection order may be obtained with or without

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<sup>4</sup> R.C. 3113.331(D)(1).

<sup>5</sup> R.C. 3113.331(D)(2)(b).

<sup>6</sup> R.C. 3113.331(D)(2)(a).

<sup>7</sup> R.C. 3113.331(D)(3).

bond. An order under the bill, other than an *ex parte* order, that grants or denies an application for a protection order, approval of a consent agreement, or modification or termination of a protection order or consent agreement is a final, appealable order.<sup>8</sup>

In all stages of a proceeding under the bill, a petitioner may be accompanied by a victim advocate (a person who provides support and assistance).<sup>9</sup>

## **Remedies**

### **Against respondent**

After an *ex parte* or full hearing, the court may grant any protection order, with or without bond, or approve any consent agreement to bring about a cessation of dating violence against the petitioner alleging dating violence. The order or agreement may:<sup>10</sup>

- Direct the respondent to refrain from abusing or from committing sexually oriented offenses against the petitioner alleging dating violence;
- Require the respondent, petitioner alleging dating violence, petitioner filing the petition if other than the person alleging dating violence (hereafter petitioner filing the petition), or any combination of those persons, to seek counseling;
- Require the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner alleging dating violence or petitioner filing the petition;
- Require that the respondent not remove, damage, hide, harm, or dispose of any companion animal, as defined by existing law, owned or possessed by the petitioner alleging dating violence;
- Authorize the petitioner alleging dating violence to remove a companion animal owned by that petitioner from the possession of the respondent;
- Grant other relief that the court considers equitable and fair.

If a protection order was issued under the bill's provisions in a prior action involving the respondent and the petitioner alleging dating violence or the petitioner

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<sup>8</sup> R.C. 3113.331(G).

<sup>9</sup> R.C. 3113.331(A)(4) and (K).

<sup>10</sup> R.C. 3113.331(E)(1) and (A)(6), by reference to R.C. 959.131, not in the bill.



filing the petition, the court may include in a protection order a prohibition against the respondent returning to the residence, school, business, or place of employment.<sup>11</sup>

A protection order issued or consent agreement approved by the court under the bill remains valid until a date certain, but not later than five years from the date of issuance or approval, or not later than the date a respondent who is less than 18 years of age turns 19, unless modified or terminated (see "**Termination and modification**," below). A protection order or consent agreement may be renewed in the same manner in which the original order was issued or consent agreement was approved.<sup>12</sup>

If a protection order or consent agreement issued under the bill requires the respondent to refrain from entering the residence, school, business, or place of employment of the petitioner alleging dating violence or the petitioner filing the petition, the order or agreement must state clearly that the order or agreement cannot be waived or nullified by an invitation to the respondent from that petitioner to enter the residence, school, business, or place of employment or by the respondent's entry into one of those places otherwise except upon the consent of the applicable petitioner. This provision does not limit the court's discretion to determine that a respondent charged with contempt of court for an alleged violation of a protection order or consent agreement did not commit the violation or was not in contempt of court.<sup>13</sup>

#### **Against petitioner**

A court may not issue a protection order under the bill that requires a petitioner alleging dating violence 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:<sup>14</sup>

- The respondent files a separate petition for a protection order under the bill;
- 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 notice;

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<sup>11</sup> R.C. 3113.331(E)(2).

<sup>12</sup> R.C. 3113.331(E)(3).

<sup>13</sup> R.C. 3113.331(E)(5).

<sup>14</sup> R.C. 3113.331(E)(4).



- 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 protection order and the petitioner is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed an act of dating violence, that both the petitioner and the respondent acted primarily as aggressors, and that neither the petitioner nor the respondent acted primarily in self-defense.

### **Nonexclusivity**

The remedies and procedures provided by the bill are in addition to, and not in lieu of, any other available civil or criminal remedies.<sup>15</sup>

### **Modification and termination of protection order**

The bill authorizes a court that issues a protection order or approves a consent agreement under its provisions after a full hearing to modify or terminate the order or agreement. Either the petitioner alleging dating violence 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 because the order or agreement is no longer needed or because the terms of the order or agreement are no longer appropriate.<sup>16</sup>

In considering whether to modify or terminate a protection order or consent agreement under the bill, the court must consider all relevant factors, including the following:<sup>17</sup>

- Whether the petitioner consents to modification or termination;
- Whether the petitioner fears the respondent;

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<sup>15</sup> R.C. 3113.311(G).

<sup>16</sup> R.C. 3113.331(E)(6)(a) and (b).

<sup>17</sup> R.C. 3113.331(E)(6)(c).



- The current nature of the relationship between the petitioner and the respondent;
- The circumstances of the petitioner and respondent, including the relative proximity of the petitioner's and respondent's workplaces and residences;
- 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;
- Whether the respondent has been convicted of or been adjudicated a delinquent child for 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 any state;
- Whether the respondent has participated in any dating violence treatment, intervention program, or other counseling addressing dating violence and whether the respondent has completed the treatment, program, or counseling;
- The time that has elapsed since the order was issued or the agreement was approved;
- The age and health of the respondent;
- 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 alleging dating violence or the petitioner filing the petition if other than the person alleging dating violence.

If the court modifies or terminates a protection order or consent agreement under the bill, it must issue copies of the modified or terminated order or agreement (see "**Notice of order and possible firearms restriction**," below). A petitioner may also provide notice of the modification or termination to the judicial and law enforcement





officials in any county other than the county in which the order or agreement is modified or terminated (see "**Registration of protection orders**," below).<sup>18</sup>

### **Sealing of order**

The bill requires that a protection order issued or consent agreement approved under the bill's provisions state that the court will automatically seal all of the records of the proceeding in which the order is issued or agreement approved when the respondent reaches 19 years of age unless the petitioner provides the court with evidence that the respondent has not complied with all of the terms of the order or agreement. The order or agreement must specify the date when the respondent turns 19.<sup>19</sup>

### **Notice of order and possible firearms restriction**

The bill requires the court to issue a copy of any protection order or consent agreement that is issued, approved, modified, or terminated under the bill to the petitioner, the respondent, and all law enforcement agencies that have jurisdiction to enforce the order or agreement. The court must direct that a copy of an order be delivered to the respondent on the day the order is entered.<sup>20</sup>

When the court issues an order or approves an agreement under the bill, it must provide the parties with oral or written notice, the language of which is specified in the bill, that as a result of the order or agreement it may be unlawful under federal law for one or both of the parties to possess or purchase a firearm or ammunition.<sup>21</sup>

### **Fees and costs**

In general, regardless of whether a protection order is issued or a consent agreement is approved by a court of another county or state, the bill 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 of a petition under the bill or in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal, or service of a protection order, consent agreement, or witness subpoena or for obtaining a certified copy of a protection order or consent agreement. However, whether or not a protection order is issued or a consent agreement is approved under the bill, the court

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<sup>18</sup> R.C. 3113.331(E)(6)(d).

<sup>19</sup> R.C. 3113.311(E)(7).

<sup>20</sup> R.C. 3113.331(F)(1).

<sup>21</sup> R.C. 3113.331(F)(2).



may assess costs against the respondent in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal, or service of a protection order, consent agreement, or witness subpoena or for obtaining a certified copy of a protection order or consent agreement. Also, if the respondent under an order or agreement moves for modification or termination of it and the court denies the motion, the court may assess costs against the respondent for filing the motion.<sup>22</sup>

### **Offense of "violating a protection order"**

The bill provides that a person who recklessly violates terms of a protection order issued or a consent agreement approved under its provisions is guilty of the existing offense of "violating a protection order," generally a misdemeanor of the first degree.<sup>23</sup>

### **Registration of protection orders**

The bill authorizes a petitioner who obtains a protection order or consent agreement under the bill to give notice of the issuance or approval of the order or agreement to the judicial and law enforcement officials in any county other than the one in which the issuing or approving court is located by registering the order or agreement in the other county and filing a copy of the registered order or registered agreement with a law enforcement agency in the other county. 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 in Ohio by registering the order under a specified provision of existing law and filing a copy of the registered order with a law enforcement agency in that county.<sup>24</sup>

A petitioner may register a temporary protection order, protection order, or consent agreement in a county other than the one in which the issuing or approving court is located by presenting a certified copy to the clerk of the court of common pleas, municipal court, or county court in the other county. The clerk must then place an endorsement of registration on the order or agreement and give the petitioner a copy of the order or agreement bearing the proof of registration. The clerk of each common pleas, municipal, and county court must maintain a registry of certified copies of

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<sup>22</sup> R.C. 3113.331(E)(6)(e) and (I).

<sup>23</sup> R.C. 2919.27(A) and 3113.331(J).

<sup>24</sup> R.C. 3113.331(L)(1) and 2919.272, not in the bill.



temporary protection orders, protection orders, or consent agreements that have been registered with the clerk.<sup>25</sup>

## **Law enforcement responsibilities**

The bill requires all law enforcement agencies to maintain an index for the protection orders and the approved consent agreements provided to them by the issuing or approving courts. An agency must note on the index the date and time that it received each order or consent agreement.<sup>26</sup>

Regardless of whether a petitioner has registered an order or agreement in the county in which the officer's agency has jurisdiction (see "**Registration of protection orders**," above), any officer of a law enforcement agency must enforce a protection order issued or consent agreement approved by any court in Ohio, including removing the respondent from the premises, if appropriate.<sup>27</sup>

Any law enforcement agency that investigates a dispute involving persons in a dating relationship must provide the potential petitioner alleging dating violence involved with information about the relief available under the bill.<sup>28</sup>

## **Victims' bill of rights pamphlet**

Existing 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 upon first contact.<sup>29</sup> The bill adds to the list of rights that must be explained the right of a petitioner alleging dating violence to seek a civil protection order under the new provisions dealing with violence against petitioners alleging dating violence.<sup>30</sup>

## **Access to domestic violence shelters**

For purposes of the Revised Code sections that deal with shelters for victims of domestic violence, existing law defines "domestic violence" as "attempting to cause or

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<sup>25</sup> R.C. 3113.331(L)(2) and (3).

<sup>26</sup> R.C. 3113.31(F)(3).

<sup>27</sup> R.C. 3113.331(F)(4).

<sup>28</sup> R.C. 3113.331(H).

<sup>29</sup> R.C. 109.42(B)(1).

<sup>30</sup> R.C. 109.42(A)(15).



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." The bill expands that definition to provide that "domestic violence" includes "dating violence" as defined in the bill. Existing law defines "family or household member" to include various individuals having a close relationship to a person who commits domestic violence, such as a spouse, former spouse, person living with the perpetrator as a spouse, parent, or child. The bill adds to the list of included persons a person in a dating relationship with the person committing the dating violence and who is the victim of that dating violence, thereby extending the shelter provisions to those persons.<sup>31</sup>

## Existing protection orders

Existing law, unchanged by the bill, provides for the issuance of 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;<sup>32</sup>

(2) A civil protection order against a person: (a) age 18 or older who allegedly committed menacing by stalking or a sexually oriented offense against the person to be protected by the order,<sup>33</sup> or (b) who allegedly has engaged in domestic violence (including any sexually oriented offense) against a specified family or household member to be protected under the order;<sup>34</sup>

(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,<sup>35</sup> 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

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<sup>31</sup> R.C. 3113.33(A), (B)(3), and (E).

<sup>32</sup> R.C. 2151.34, not in the bill.

<sup>33</sup> R.C. 2903.214, not in the bill.

<sup>34</sup> R.C. 3113.31, not in the bill.

<sup>35</sup> R.C. 2903.213, not in the bill.



violence (including domestic violence), or a sexually oriented offense against an alleged victim who was a family or household member.<sup>36</sup>

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## HISTORY

ACTION	DATE
Introduced	11-09-15
Reported, H. Judiciary	05-25-16
Passed House (96-0)	05-25-16

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<sup>36</sup> R.C. 2919.26, not in the bill.

