



OHIO LEGISLATIVE SERVICE COMMISSION

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Fiscal Note & Local Impact Statement

Bill: S.B. 76 of the 131st G.A.

Date: December 9, 2016

Status: As Passed by the House

Sponsor: Sens. Bacon and Manning

Local Impact Statement Procedure Required: No

Contents: Protection orders

State Fiscal Highlights

- No direct fiscal effect on the state.

Local Fiscal Highlights

- The bill's penalty provisions are likely to increase to some degree the circumstances in which a person can be charged and successfully prosecuted for a misdemeanor or felony violation of a protection order. Any related county and municipal expenditure and revenue changes will be minimal annually, as the number of new or enhanced violations is expected to be relatively small.
- The bill is not expected to generate a significant increase in the number of petitions filed with, or subsequent orders issued by, the appropriate division of the court of common pleas. There may be a minimal increase in the time and effort required to hear and issue such orders, but the court should largely be able to accomplish this with existing resources.
- Law enforcement agencies generally should be able to incorporate the work associated with the addition of intimate partner protection orders and consent agreements into an existing tracking and enforcement system with little, if any, discernible cost.

Detailed Fiscal Analysis

The bill: (1) specifies that a person does not need to be served with a protection order or consent agreement to be convicted of violating a protection order if the prosecution proves that the person was shown the order or agreement or was informed by a judge or law enforcement officer that an order or agreement had been issued and that the person recklessly violated the order or agreement, and expressly clarifies the circumstances in which the offense of violating a protection order is classified as a

felony of the fifth degree, and (2) authorizes the issuance of a civil dating violence protection order for an intimate partner by the appropriate division of a court of common pleas.

Criminal violation of a protection order

Statewide, the number of criminal violations of all types of protection orders and consent agreements appears to range between 2,000 and 3,000 annually. Those violations are not tracked in a manner that permits a reliable or accurate differentiation between a misdemeanor and a felony. Anecdotally however, the bill's protection order penalty provisions are not expected to generate a significant increase in the number of violations that counties and municipalities investigate and prosecute.

Notice of the order

The bill's provision specifying that a person under certain circumstances may be convicted of violating a protection order without having been served will increase the likelihood that a local prosecutor can successfully prosecute a case that would otherwise be problematic under current law and practice. Under current law, unchanged by the bill, violating a protection order generally is a misdemeanor of the first degree, which falls under the subject matter jurisdiction of a municipal or county court.

Conversations with the Judicial Conference of Ohio indicate that this provision will not have a significant impact on the time and expenses that the court allocates annually to manage its caseload, as the number of situations in which the provision will be applicable is expected to be relatively small. This also suggests that any additional costs that counties and municipalities may incur to investigate, prosecute, and sanction violations will largely be absorbed by existing staff and budgetary resources. Related revenues in the form of fines, fees, and court costs collected from offenders will be minimal annually.

It is also possible that this provision could result in additional litigation, as the bill does not specify how a person is to be "informed" by a judge or law enforcement officer that an order or agreement has been issued. To the extent that this happens, courts may have to expend additional time and effort to hear these cases and determine what constitutes being "informed." Presumably, a body of case law will develop over time and provide the court with more guidance on what does and does not constitute being "informed."

Felony penalty enhancement

The bill expressly clarifies that a subsequent violation of a civil domestic violence protection order or a subsequent violation of a consent agreement establishing a juvenile protection order, a criminal stalking protection order, or a civil domestic violence protection order is a felony of the fifth degree. It appears that certain local jurisdictions already interpret these violations as a felony of the fifth degree; it is possible that others may treat these violations as a misdemeanor. In those latter

jurisdictions, the practical effect of this provision will likely be to shift certain misdemeanor cases from a municipal court or a county court to the felony jurisdiction of a court of common pleas.

As a result of the case shifting noted in the preceding paragraph, municipalities may experience a reduction in the amount of their annual criminal justice system expenditures related to investigating, adjudicating, prosecuting, defending (if indigent), and sanctioning offenders in such cases. Conversely, counties could experience an increase in their annual criminal and juvenile justice system expenditures, as felonies are typically more time consuming and expensive to resolve and the local sanctioning costs can be higher as well. The number of cases shifting in this manner is expected to be relatively small, which suggests that the related cost shift will be minimal annually. There would also likely be a minimal annual shift in fine, fee, and court cost revenues collected from offenders, with municipalities losing revenues and counties gaining revenues.

Civil dating violence protection orders

The bill authorizes the issuance of a civil dating violence protection order for an intimate partner by the appropriate division of a court of common pleas. The term intimate partner refers to any person who has or has had a continuing and significant relationship of a romantic nature with the person against whom a protection order is sought. Under current law, domestic violence protection orders can be obtained only by family or household members (R.C. 3113.31).

Under current law, intimate partners may file a petition for a Civil Stalking Protection Order (CSPO) or a Civil Sexually Oriented Offense Protection Order (CSOOPO) if they have been a victim of two or more incidents in which they believed themselves to be in danger or one incidence of a sexually oriented offense. Civil protection orders do not require a criminal charge and can remain in effect for up to five years. Also under current law, intimate partners may obtain criminal protection orders in cases of violence, sexual violence, or stalking. In these cases, the perpetrator must be charged with a crime and the protection order is only in force while the criminal case is active in the courts.

The number of petitioners for civil protection orders is likely to increase to some degree as a result of the bill. This is because some individuals who are not eligible to petition for a domestic violence protection order under current law will meet the bill's requirements permitting them to do so. The number of additional new filings that may be created by the bill is unknown, but is not expected to create a substantial burden on the courts. To the degree that any costs can be quantified, they are likely to be minimal, mostly in terms of the additional time and effort that existing court personnel take to process filings and orders.

Because an intimate partner will be eligible for a civil dating violence protection order in addition to or in place of a CSPO or CSOOPO, some filings may shift between divisions of the courts of common pleas: from the general division to the domestic

relations division. This simply means the work and related costs move from one division of the court to another. Juvenile cases will remain in the juvenile division of the courts of common pleas.

Law enforcement responsibilities

The bill requires all law enforcement agencies to maintain an index of dating violence protection orders and consent agreements provided by the courts, to enforce such orders and agreements, and to provide intimate partners involved in domestic disputes with information about relief and remedies. Existing law already imposes these duties and responsibilities on law enforcement with respect to protection orders and consent agreements. Given a system is already in place to track and enforce protection orders and consent agreements, law enforcement agencies generally should be able to incorporate the work associated with the addition of dating violence protection orders and consent agreements with little, if any, discernible cost.

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. The bill requires the Attorney General to include notice of the right of an intimate partner to a dating violence protection order in the pamphlet. As the Attorney General periodically updates the pamphlet, there should be no discernible cost to add the right to an intimate partner protection order to the list of rights.