



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 10\*

128th General Assembly

(As Re-reported by S. Judiciary - Civil Justice)

**Reps.** Brown, Szollosi, B. Williams, Letson, Harwood, Stewart, Chandler, Gardner, Boyd, Garrison, Otterman, Luckie, Stebelton, Harris, Newcomb, S. Williams, Phillips, Foley, Slesnick, Fende, Pillich, Book, Mecklenborg, Skindell, Yates, Amstutz, Bacon, Belcher, Blair, Bolon, Boose, Bubp, Carney, Celeste, Coley, Combs, Daniels, DeBose, DeGeeter, Derickson, Dodd, Domenick, Driehaus, Dyer, Evans, Garland, Gerberry, Goyal, Grossman, Hackett, Hagan, Heard, Hottinger, Jones, Koziura, Lehner, Lundy, Mallory, Mandel, McClain, Murray, Oelslager, Okey, Patten, Pryor, Ruhl, Sayre, Sears, Snitchler, Ujvagi, Weddington, Winburn, Yuko, Zehringer

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## BILL SUMMARY

- Provides that the existing procedure for filing a petition for a protection order for the alleged commission of menacing by stalking or a sexually oriented offense applies to offenders who are 18 years of age or older.
- Requires a petition for a protection order against a respondent who is a minor to be filed in the juvenile division of the court of common pleas in the county in which the petitioner resides.
- Creates a procedure in the Juvenile Code, parallel to the existing procedure, for seeking a criminal protection order against a minor respondent pursuant to which a person alleges that (1) the respondent committed felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, a sexually oriented offense, or a violation of a municipal ordinance that is substantially equivalent to any of those offenses against the person, and (2) the respondent is less than 18 years of age.
- Provides that a petition for a criminal protection order against a minor respondent may be filed by any person on behalf of that person, any parent or adult family or

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\* This analysis was prepared before the re-report of the Senate Judiciary - Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

household member on behalf of any other family or household member, or any person who is determined by the court in its discretion as an appropriate person to seek relief on behalf of any child.

- Authorizes the juvenile court, after appropriate hearings, to issue a criminal protection order that contains terms designed to ensure the safety and protection of the person to be protected, including the electronic monitoring of the respondent upon certain allegations and findings, and requires the protection order to clearly state that the person to be protected cannot waive or nullify by invitation or consent any requirement in the order.
- Provides that the juvenile court may determine if the respondent who is less than 18 years of age is entitled to court-appointed counsel in the proceeding for a criminal protection order.
- Allows victims of domestic violence to apply for a civil protection order or consent agreement in the juvenile division of the court of common pleas of the county in which the person to be protected resides if the respondent is under 18 years of age.
- Requires that a criminal protection order or a civil protection order or consent agreement against a respondent who is under 18 years of age include a provision that the juvenile court will automatically seal the records of the proceeding in which the order is issued or the agreement approved on the date the respondent attains 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 and requires the order or agreement to specify the date when the respondent attains 19 years of age.
- Requires a juvenile court that issues a criminal or civil protection order or approves a consent agreement against a person who is under 18 years of age to automatically seal all of the records of the proceeding in which the order was issued or the agreement approved on the date the person against whom the order was issued or the agreement approved attains 19 years of age if the court determines that the person has complied with all of the terms of the order or agreement and requires a juvenile court to automatically seal all of the records in the applicable proceeding if it does not issue any criminal protection order or civil protection order or approve any consent agreement in the proceeding.
- Provides that if a juvenile court determines that a person who is under 18 years of age and against whom a protection order or consent agreement is issued or approved did not comply with all of the terms of the protection order or consent agreement, the juvenile court must consider sealing all of the records of the proceeding upon the court's own motion or the application of the person and the

motion or application may be made at any time after two years after the expiration of the protection order or consent agreement.

- Includes violating a criminal or civil protection order or a consent agreement obtained against a respondent who is under 18 years of age under the above described procedures in a juvenile court within the offense of "violating a protection order."
- Expands the jurisdiction of the juvenile court to hear and determine matters involving protection orders or consent agreements against a child and to enforce those orders or agreements until a date certain but not later than the date the child attains 19 years of age.
- Includes a foster parent in the definition of "family or household member" in the criminal and civil domestic violence laws.
- Permits the Attorney General to represent any Court of Appeals, Court of Appeals judge, or Court of Appeals employee in a case brought against the court, judge, or employee that does not seek monetary relief.
- Provides that the court is no longer required to electronically monitor an indigent minor who is the subject of a protection order issued under the bill once the maximum amount of \$300,000 that can be paid out of the Reparations Fund for electronic monitoring under protection orders and consent agreements is reached.
- Designates the statewide communications network of information, data, and statistics used by Ohio law enforcement agencies as the Ohio Law Enforcement Gateway and creates the offense of unauthorized use of the Ohio Law Enforcement Gateway, a felony of the fifth degree.
- Provides that in Butler County, the judges of the division of domestic relations also have concurrent jurisdiction with the judges of the juvenile division with respect to certain types of cases regarding custody, support, or custody and support of a child.

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## TABLE OF CONTENTS

Criminal protection orders.....	4
Existing law.....	4
Operation of the bill.....	6
Electronic monitoring .....	9
Offense of "violating a protection order" .....	11
Civil protection order available for a victim of domestic violence .....	12
Existing law.....	12
Operation of the bill.....	14
Sealing of juvenile court records in protection order proceedings .....	15

Juvenile court's exclusive jurisdiction over new protection order procedure and civil protection orders and consent agreements for victims of domestic violence.....	18
Inclusion of foster parents as victims under the domestic violence laws .....	18
The criminal offense of domestic violence.....	18
Shelters for domestic violence victims.....	19
Attorney General's representation of a Court of Appeals judge or an employee of a Court of Appeals .....	20
Ohio Law Enforcement Gateway .....	20
Butler County Juvenile Court jurisdiction .....	21

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## CONTENT AND OPERATION

### Criminal protection orders

#### Existing law

##### Petition for protection order

Generally, any person may petition the court for a protection order from another person allegedly engaging in a violation of R.C. 2903.211 (menacing by stalking) or a sexually oriented offense (see **COMMENT 1**). Additionally, any parent or adult household member may seek such relief on behalf of any other family or household member. The petition must be filed with the court of common pleas in the county in which the person to be protected by the protection order resides and must contain all of the following (R.C. 2903.214(C)):

(1) An allegation that the respondent engaged in a violation of R.C. 2903.211 (menacing by stalking), 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.

(2) If the petitioner seeks relief in the form of electronic monitoring of the respondent, an allegation that at any time 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;

(3) A request for relief.

Additionally, the petitioner may request a temporary *ex parte* order, and the court must hold an *ex parte* hearing as soon as possible after the petition is filed, but not later than the next day after the court is in session after the petition is filed. The court may issue an *ex parte* order if the court finds it necessary for the safety and protection of the person to be protected, including that the person is in "immediate and present

danger." "Immediate and present danger" includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the protection order with bodily harm, or in which the respondent previously has been convicted of or pleaded guilty to menacing by stalking or a sexually oriented offense against the person to be protected by the protection order. An *ex parte* hearing is followed by a full hearing within ten court days. (R.C. 2903.214(D)(1) and (2)(a).)

### **Issuance of protection order**

After the appropriate hearings, the court may issue a protection order that ensures the safety and protection of the person to be protected, 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 such a requirement in the order, it also must include a provision that the order cannot be waived or nullified by an invitation to the alleged offender from the complainant to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the petitioner or family or household member. (R.C. 2903.214(E)(1)(a) and (5)(a).)

If the court considering a petition that includes an allegation of the type described above in paragraph (2) under "**Petition for protection order**" or the court upon its own motion, finds upon clear and convincing evidence that the petitioner reasonably believed that the respondent's conduct at any time 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 the person to be protected, the court may 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 is in addition to any other relief granted to the petitioner. (R.C. 2903.214(E)(1)(b).)

In the protection order, the court may also include a provision that requires the petitioner to do, or refrain from doing, an act that the court may require the respondent to do, or refrain from doing. This provision may be included in the protection order only when all of the following circumstances exist (R.C. 2903.214(E)(3)):

- (1) The respondent files a separate petition for a protection order.
- (2) 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.

(3) If the petitioner has requested an *ex parte* order, the court does not delay any hearing beyond the time specified in the order to consolidate the hearing with a hearing on the petition filed by the respondent.

(4) 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 menacing by stalking, has committed a sexually oriented offense, or has violated another protection order relative to the person to be protected by the protection order.

#### **Duration of protection order**

A protection order is valid until a date certain but not later than five years after the date of its issuance (R.C. 2903.214(E)(2)(a)).

#### **Operation of the bill**

##### **Existing procedure for obtaining criminal protection order**

The bill modifies the procedure for obtaining under R.C. 2903.214 a protection order against a person who allegedly engaged in menacing by stalking or a sexually oriented offense (existing procedure described above in "**Existing law**") by requiring the petition for the protection order to allege that the respondent (person against whom the protection order is obtained) is 18 years of age or older. This change limits the existing procedure to respondents who are 18 years of age or older. (R.C. 2903.214(C)(1).) The bill also modifies the conditions for requiring an electronic monitoring device for a respondent (see "**Electronic monitoring**," below).

##### **New procedure for obtaining a criminal protection order**

The bill also creates a similar procedure for obtaining a criminal protection order against a person who is under 18 years of age. The new procedure is the same structurally as the existing procedure but applies only to respondents who are under 18 years of age. Under the bill, any of the following may seek relief by filing a petition with the juvenile division of the court of common pleas of the county in which the person to be protected by the protection order resides: any person on behalf of that person, any parent or adult family or household member on behalf of any other family or household member,<sup>1</sup> or any person who is determined by the court in its discretion as an appropriate person to seek relief on behalf of any child. The bill specifies that the petition for the protection order must contain or state: (1) an allegation that the respondent (defined as a person who is under 18 years of age and against whom a

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<sup>1</sup> See "**Civil protection order available for a victim of domestic violence**," below, for the definition of "family or household member."

petition is filed) engaged in a violation of R.C. 2903.11 (felonious assault), 2903.12 (aggravated assault), 2903.13 (assault), 2903.21 (aggravated menacing), 2903.211 (menacing by stalking), 2903.22 (menacing), or 2911.211 (aggravated trespass) (hereafter "covered offenses") (see **COMMENT 2 to 8**), committed a sexually oriented offense, or engaged in a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the protection order, including a description of the nature and extent of the violation, (2) an allegation similar to paragraph (2) in "**Petition for protection order**" under "**Existing law**," above, if the petitioner seeks relief in the form of electronic monitoring of the respondent, and (3) a request for relief under the new procedure. The bill authorizes the court, in its discretion, to determine whether or not to give notice that a petition has been filed on behalf of a child to a parent of the child if the petition was filed by any person other than a parent of the child or to any person who is determined by the court to be an appropriate person to receive notice of the filing of the petition. (R.C. 2151.34(A), (B), and (C).)

#### **Ex parte hearing and order; notice of full hearing**

Under the bill, the petitioner (defined as a person who files a petition under the new procedure and includes a person on whose behalf such a petition is filed) may request a temporary *ex parte* order, and the court must hold an *ex parte* hearing as soon as possible after the petition is filed, but not later than the next day after the court is in session after the petition is filed. The court may issue an *ex parte* order if the court finds it necessary for the safety and protection of the person to be protected, including that the person is in "immediate and present danger." "Immediate and present danger" includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the protection order with bodily harm, or in which the respondent previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any of the covered offenses, a sexually oriented offense, or a violation of a municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the protection order. An *ex parte* hearing is followed by a full hearing within ten court days. The court must give the respondent notice of, and an opportunity to be heard at, the full hearing and also must give notice of the full hearing to the respondent's parent, guardian, or legal custodian. (R.C. 2151.34(A)(5) and (D)(1) and (2)(a).)

#### **Issuance of protection order**

The bill provides that 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 protection order. A protection order must clearly state that the person to be protected by the order cannot waive or nullify by invitation or consent any requirement in the order. (R.C.

2151.34(E)(1)(a) and (5)(a).) If the court considering a petition that includes an allegation of the type described above in paragraph (2) under "**New procedure for obtaining a criminal protection order**," or the court upon its own motion, finds upon clear and convincing evidence that the petitioner reasonably believed that the respondent's conduct at any time 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 the person to be protected and if the provisions regarding electronic monitoring discussed below under "**Electronic monitoring**" do not prohibit the issuance of an order that the respondent be electronically monitored, the court may 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 is in addition to any other relief granted to the petitioner. (R.C. 2151.34(E)(1)(b).)

In the protection order, the court may not include a provision that requires the petitioner to do, or refrain from doing, an act that the court may require the respondent to do, or refrain from doing unless all of the same circumstances as described above in paragraphs (1), (2), and (3) in "**Issuance of protection order**" under "**Existing law**" exist and if, 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 any of the covered offenses, a sexually oriented offense, or a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by that protection order or has violated a protection order issued under the new procedure or under R.C. 2903.213 (protection order issued as a pretrial condition of release of certain alleged offenders) relative to the person to be protected by that protection order. (R.C. 2151.34(E)(3).)

The bill requires that a protection order issued pursuant to the new procedure include a provision that the court will automatically seal all of the records of the proceeding in which the order is issued on the date the respondent attains the age of 19 years unless the petitioner provides the court with evidence that the respondent has not complied with all of the terms of the protection order. The protection order must specify the date when the respondent attains the age of 19 years. (R.C. 2151.34(E)(6).)

The bill further requires the court to direct that a copy of the protection order be delivered to the respondent and the respondent's parent, guardian, or legal custodian on the same day the order is issued (R.C. 2151.34(F)(1)).

#### **Duration of protection order**

The bill provides that any protection order issued under the above described new procedure is valid until a date certain but not later than the date the respondent attains 19 years of age (R.C. 2151.34(E)(2)(a)).

## **Court determines if respondent is entitled to appointed counsel**

The bill permits the court, in its discretion, to determine if the respondent is entitled to court-appointed counsel in the new procedures discussed above for protection orders obtained against a person under 18 years of age (R.C. 2151.34(O)).

## **Electronic monitoring**

Under existing law, the Reparations Fund can be used for certain purposes, including to pay the costs of installation and monitoring of an electronic monitoring device used in the monitoring of a respondent pursuant to an electronic monitoring order issued by a court under R.C. 2903.214(E)(1)(b) (law regarding issuance of a protection order involving menacing by stalking) if the court determines that the respondent is indigent or in the monitoring of an offender pursuant to an electronic monitoring order issued under R.C. 2919.27(B)(5) (law regarding violating certain protection orders) if the court determines that the offender is indigent. The bill also allows the Reparations Fund to be used to pay the costs of installation and monitoring of an electronic monitoring device used in the monitoring of a respondent pursuant to an electronic monitoring order issued by a court under R.C. 2151.34(E)(1)(b) (law enacted by the bill regarding issuance of a protection order in certain circumstances when the offender is under 18 years of age). (R.C. 2743.191(A)(1)(n).)

Existing law provides that if the court orders electronic monitoring of the respondent related to the issuance of a protection order issued against the respondent in a case involving menacing by stalking, 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. Unless the court determines that the respondent is indigent, the court must order the respondent to pay the cost of the installation and monitoring of the electronic monitoring device. If the court determines that the respondent is indigent, the cost of the installation and monitoring of the electronic monitoring device may be paid out of the funds from the Reparations Fund. The total amount of costs for the installation and monitoring of electronic monitoring devices from the Reparations Fund for orders issued in a case involving menacing by stalking cannot exceed \$300,000 per year. (R.C. 2903.214(N)(1).)

Existing law authorizes the Attorney General (AG) to promulgate rules pursuant to R.C. 111.15 to govern payments made from the Reparations Fund pursuant to the provision described above. The rules may include reasonable limits on the total cost paid pursuant to the provision described above per respondent, the amount of the \$300,000 allocated to each county, and how many invoices may be submitted by a county, court, or other entity.

Under the bill, the cost of the installation and monitoring of the electronic monitoring device for an indigent respondent in a case involving menacing by stalking as discussed above is specifically subject to the maximum allowable to be paid in any rule from the Reparations Fund and the rules promulgated by the AG. The bill further provides that the total amount of the costs for the installation and monitoring of electronic devices for indigent respondents paid in cases involving menacing by stalking (existing law), cases involving respondents who are under 18 years of age and are subject to a protection order issued under R.C. 2151.34 (added by the bill), and cases involving respondents who are electronically monitored pursuant to R.C. 2919.27 due to a violation of a protection order (added by the bill) from the Reparations Fund cannot exceed \$300,000 per year. In addition, the bill requires the rules of the AG to apply to payments made from the Fund for all three types of electronic monitoring. (R.C. 2919.27(N)(1) and (2).)

Existing law provides that if an offender violates R.C. 2919.27 by violating a protection order issued under R.C. 2903.214 (menacing by stalking protection order) that required electronic monitoring of the offender, the court may require in addition to any other sentence imposed on the offender that the offender be electronically monitored for a period not exceeding five years by a law enforcement agency designated by the court. If the court determines that the offender is indigent, the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device must be paid out of the funds from the Reparations Fund. Under the bill, the costs of the installation of the electronic monitoring device and the cost of the monitoring device *may* be paid out of the funds from the Reparations Fund. The bill also states that this provision applies to the violation of a protection order issued under R.C. 2151.34 (law regarding issuance of a protection order in certain circumstances when the offender is under 18 years of age) that required electronic monitoring of the offender. Furthermore, the bill states that the total amount paid from the Reparations Fund for electronic monitoring under this provision and R.C. 2151.34 and 2903.214 cannot exceed \$300,000 per year and that the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device is subject to the maximum amount allowable out of the Reparations Fund and the rules promulgated by the Attorney General. (R.C. 2919.27(B)(5).)

Under the bill, if the court orders electronic monitoring of the respondent under R.C. 2151.34 (law regarding issuance of a protection order in certain circumstances when the offender is under 18 years of age), the court must follow the same procedures as for the electronic monitoring of an offender subject to a protection order for menacing by stalking described above. If the court determines that the respondent is indigent and subject to the maximum amount allowable to be paid out in any year from the Reparations Fund and the rules promulgated by the Attorney General, the cost of the installation and monitoring of the electronic monitoring device may be paid out of

funds from the Reparations Fund. The total amount paid from the Reparations Fund for electronic monitoring under R.C. 2151.34, 2903.214, and 2919.27 cannot exceed \$300,000 per year. When the total amount paid from the Reparations Fund in any year for electronic monitoring under those R.C. sections equals or exceeds \$300,000, the court cannot order pursuant to R.C. 2151.34 (law regarding issuance of a protection order in certain circumstances when the offender is under 18 years of age) that an indigent respondent be electronically monitored. (R.C. 2151.34(N)(1).)

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

Existing law prohibits, in part, a person from recklessly violating the terms of a menacing by stalking protection order, a protection order issued as a pretrial condition of release of a person who allegedly committed the offenses of felonious assault, aggravated assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, a violation of a municipal ordinance similar to assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, or a sexually oriented offense, a civil domestic violence protection order or consent agreement, or a protection order issued as a pretrial condition of release of a person who allegedly committed any of certain offenses against a family or household member (R.C. 2919.27(A)(1) and (2)). A person who violates this provision is guilty of "violating a protection order," generally a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to a violation of a protection order, 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 one or more offenses of "violating a protection order," "violating a protection order" is a felony of the fifth degree. If the protection order violated by the offender was a menacing by stalking protection order that required electronic monitoring of the offender, 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. If the court requires that the offender be electronically monitored, unless the court determines that the offender is indigent, the court must order that the offender pay the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device. If the court determines that the offender is indigent, the costs of the installation of the electronic monitoring device and the cost of monitoring the electronic monitoring device must be paid out of funds from the Reparations Fund created pursuant to R.C. 2743.191. (R.C. 2919.27(B).)

The bill prohibits a person from recklessly violating the terms of a protection order issued against a person who is under 18 years of age under the new procedure created by the bill. The penalty for violating this prohibition is the same as for violating the existing prohibition against violating the terms of a protection order. The bill also

applies the above described electronic monitoring sanction in existing law if the protection order violated by the offender was an order that was issued under the new procedure and required electronic monitoring of the offender. (R.C. 2919.27(A)(2) and (B).)

The bill provides that a person who violates a protection order obtained under the new procedure is subject to a delinquent child proceeding or a criminal prosecution for the offense of "violating a protection order" if a violation of the order constitutes such an offense or to punishment for contempt of court. (R.C. 2151.34(K)(1).)

## **Civil protection order available for a victim of domestic violence**

### **Existing law**

Under existing law, a victim of domestic violence may apply for a civil protection order or consent agreement.<sup>2</sup> The petition for a protection order must contain an allegation that the respondent has engaged in domestic violence against a "family or household member" (defined below) of the respondent, including a description of the nature and extent of the domestic violence; the relationship of the respondent to the petitioner, and to the victim if other than the petitioner; and a request for relief. (R.C. 3113.31(C).) If a court grants a protection order or consent agreement, the order or agreement may contain any of the following provisions (R.C. 3113.31(E)(1)):

(1) A direction that the respondent refrain from abusing or from committing sexually oriented offenses against the family or household members;

(2) A grant of possession of the residence or household to the petitioner or other family or household member, to the exclusion of the respondent, by evicting the respondent, when the residence or household is owned or leased solely by the petitioner or other family or household member, or an order to the respondent to vacate the premises, when the residence or household is jointly owned or leased by the respondent and the petitioner or other family or household member;

(3) When the respondent has a duty to support the petitioner or other family or household member living in the residence and the respondent is the sole owner or lessee of the residence, a grant of possession of the residence to the petitioner or other family or household member, to the exclusion of the respondent, by ordering the

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<sup>2</sup> For purposes of a civil protection order, "domestic violence" is defined as the occurrence of one or more of the following acts against a family or household member (R.C. 3113.31(A)(1)): (1) attempting to cause or recklessly causing bodily injury, (2) placing another person by the threat of force in fear of imminent physical harm or committing a violation of R.C. 2903.211 (menacing by stalking) or R.C. 2911.211 (aggravated trespass), (3) committing any act with respect to a child that would result in the child being an abused child, or (4) committing a sexually oriented offense.

respondent to vacate the premises, or, in the case of a consent agreement, allow the respondent to provide suitable, alternative housing;

(4) A temporary allocation of parental rights and responsibilities for the care of, or an establishment of temporary parenting time rights with regard to, minor children, if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights;

(5) A requirement that the respondent maintain support, if the respondent customarily provides for or contributes to the support of the family or household member, or if the respondent has a duty to support the petitioner or family or household member;

(6) A requirement that the respondent, petitioner, victim of domestic violence, or any combination of those persons, seek counseling;

(7) A requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member;

(8) A grant of other relief that the court considers equitable and fair, including, but not limited to, an order that the respondent permit the use of a motor vehicle by the petitioner or other family or household member and the apportionment of household and family personal property.

A protection order or consent agreement approved by a court under R.C. 3113.31 generally is valid for a specific time period, not to exceed five years from the date of issuance or approval (R.C. 3113.31(E)(3)(a)).

Current law defines a "family or household member" for purposes of the law dealing with civil protection orders as any of the following (R.C. 3113.31(A)(3)):

(1) Any of the following persons who is residing or has resided with the respondent:

(a) A spouse, person living as a spouse, or former spouse of the respondent;

(b) A parent or a child of the respondent, or another person related by consanguinity or affinity to the respondent;

(c) A parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent.

(2) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.

### **Operation of the bill**

The bill expands the definition of "family or household member" to include a foster parent; thus, a foster parent could apply for a civil protection order or consent agreement under the procedure discussed above in "**Existing law.**" (R.C. 3113.31(A)(3)(a)(ii).)

The bill also allows victims of domestic violence to apply for a civil protection order or consent agreement in the juvenile division of the court of common pleas of the county in which the person to be protected resides if the respondent is under 18 years old. (R.C. 3113.31(A)(2).)

The bill provides that, for the purposes of an ex parte order, "immediate and present danger" includes a situation in which the respondent previously has been adjudicated a delinquent child for an offense that constitutes domestic violence against a family or household member (R.C. 3113.31(D)(1)).

The bill includes within the relevant factors that a court must consider when considering whether to modify or terminate a protection order or consent agreement issued under R.C. 3113.31 whether the respondent has been adjudicated a delinquent child for an offense of violence since the issuance of the protection order or approval of the consent agreement (R.C. 3113.31(E)(8)(c)(vii)).

The bill requires that any civil protection order issued or consent agreement approved include a provision that the court will automatically seal all of the records of the proceeding in which the order is issued or agreement approved on the date the respondent attains the age of 19 years 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 protection order or consent agreement must specify the date when the respondent attains the age of 19 years. (R.C. 3113.31(E)(9).)

The bill provides that a person who violates a civil protection order or consent agreement is subject to a criminal prosecution or a *delinquent child proceeding* (added by the bill) for the offense of "violating a protection order" if a violation of the order or agreement constitutes such an offense. It also provides that punishment of the person for contempt of court does not bar criminal prosecution or a *delinquent child proceeding* (added by the bill) (R.C. 3113.31(L)).

The bill provides that any protection order issued or consent agreement approved is valid until a date certain, not later than the date a respondent who is less than 18 years of age attains 19 years of age (R.C. 3113.31(E)(3)(a)).

The bill clarifies that nothing under the Domestic Violence Civil Protection Order Law prohibits the domestic relations division of a court of common pleas (in counties that have a domestic relations division) or a court of common pleas (in counties that do not have a domestic relations division) from designating a minor child as a protected party on a protection order or consent agreement (R.C. 3113.31(O)).

### **Sealing of juvenile court records in protection order proceedings**

The bill requires a juvenile court that issues a protection order or approves a consent agreement against a minor under the new procedure for the issuance of criminal protection orders or the procedure for the issuance of civil domestic violence protection orders to automatically seal all of the records of the proceeding in which the order was issued or the agreement approved on the date the person against whom the protection order was issued or the consent agreement approved attains the age of 19 years if the court determines that the person has complied with all of terms of the order or agreement. The bill requires a juvenile court to automatically seal all of the records in the applicable proceeding if it does not issue any criminal protection order or civil domestic violence protection order or approve any consent agreement in the proceeding. (R.C. 2151.358(D)(1) and (2).)

If a juvenile court that issues a protection order or approves a consent agreement under the new procedure for the issuance of criminal protection orders or the procedure for the issuance of civil domestic violence protection orders determines that the person against whom the protection order was issued or the consent agreement approved has not complied with all of the terms of the protection order or consent agreement, the court must consider sealing all of the records of the proceeding in which the order was issued or agreement approved upon the court's own motion or upon the application of a person. The court may make the motion or the person who is the subject of the records under consideration may apply for an order sealing the records of the proceeding at any time after two years after the expiration of the protection order or consent agreement. In making a determination whether to seal records pursuant to this provision, all of the following apply (R.C. 2151.358(D)(3)):

(1) The court may require a person filing an application to submit any relevant documentation to support the application.

(2) The court must promptly notify the victim or the victim's attorney of any proceedings to seal records initiated pursuant to this provision.

(3) The victim or the victim's attorney may file a response with the court within 30 days of receiving notice of the sealing proceedings.

If the victim or the victim's attorney does not file a response with the court or if the victim or the victim's attorney files a response but indicates that the victim or the victim's attorney does not object to the sealing of the records, the court may order the records of the person that are under consideration to be sealed without conducting a hearing on the motion or application. If the court decides in its discretion to conduct a hearing on the motion or application, the court must conduct the hearing within 30 days after making that decision and must give notice, by regular mail, of the date, time, and location of the hearing to the victim or the victim's attorney and to the person who is the subject of the records under consideration.

If the victim or the victim's attorney files a response with the court that indicates that the victim or the victim's attorney objects to the sealing of the records, the court must conduct a hearing on the motion or application within 30 days after the court receives the response. The court must give notice, by regular mail, of the date, time, and location of the hearing to the victim or the victim's attorney and to the person who is the subject of the records under consideration.

(4) After conducting a hearing or after due consideration when a hearing is not conducted, the court may order the records of the person that are the subject of the motion or application to be sealed.

Inspection of the records sealed may be made only by the following persons or for the following purposes (R.C. 2151.358(D)(4)):

(1) By any law enforcement officer or any prosecutor, or the assistants of the law enforcement officer or prosecutor, to determine whether the nature and character of the offense with which a person is to be charged would be affected by virtue of the person's previously having been convicted of a crime;

(2) By the parole or probation officer of the person who is the subject of the records, for the exclusive use of the officer in supervising the person while the person is on parole or under a community control sanction or a post-release control sanction, and in making inquiries and written reports as requested by the court or adult parole authority;

(3) Upon application by the person who is the subject of the records, by the persons named in that person's application;

(4) By a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case;

(5) By any prosecuting attorney or the assistants of the prosecuting attorney to determine a defendant's eligibility to enter a pre-trial diversion program;

(6) By any law enforcement agency or any authorized employee of a law enforcement agency or by the Department of Rehabilitation and Correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the Department as a corrections officer;

(7) By any law enforcement agency or any authorized employee of a law enforcement agency, for the purposes set forth below, and in the manner provided below, for law enforcement investigatory work product;

(8) By the Bureau of Criminal Identification and Investigation or any authorized employee of the Bureau for the purpose of providing information to a board or person pursuant to R.C. 109.57(F) or (G);

(9) By the Bureau of Criminal Identification and Investigation or any authorized employee of the Bureau for the purpose of performing a criminal history records check on a person to whom a certificate as prescribed in R.C. 109.77 is to be awarded;

(10) By the Bureau of Criminal Identification and Investigation or any authorized employee of the Bureau for the purpose of conducting a criminal records check of an individual pursuant to R.C. 109.572(B) that was requested pursuant to any of the provisions identified in R.C. 109.572(B)(1);

(11) By the Bureau of Criminal Identification and Investigation, an authorized employee of the Bureau, a sheriff, or an authorized employee of a sheriff in connection with a criminal records check described in R.C. 311.41 (criminal records check in connection with a license to carry a concealed handgun);

(12) By the Attorney General or an authorized employee of the Attorney General or a court for purposes of determining a person's classification pursuant to R.C. Ch. 2950. (law regarding sexual predators, habitual sexual offenders, and sexually oriented offenders).

When the nature and character of the offense with which a person is to be charged would be affected by the information, it may be used for the purpose of charging the person with an offense.

## **Juvenile court's exclusive jurisdiction over new protection order procedure and civil protection orders and consent agreements for victims of domestic violence**

The bill specifies that the juvenile court has exclusive original jurisdiction to hear and determine petitions for a protection order against a child under the new procedure described above or existing R.C. 3113.31 (civil domestic violence protection orders and consent agreements) and to enforce a protection order issued or consent agreement approved under that procedure or section against a child until a date certain but not later than the date the child is 19 years of age. The bill also specifies that, in exercising its exclusive original jurisdiction with respect to that proceeding or section in which the respondent is a child, the juvenile court retains all dispositional powers consistent with existing Rules of Juvenile Procedure and may also exercise its discretion to adjudicate the proceedings, including the issuance of protection orders or the approval of consent agreements. (R.C. 2151.23(A)(16) and (J).) The bill, for the purposes of Ohio law regarding delinquent children and juvenile traffic offenders, includes with the definition of "child" any person who, while 18 years of age, violates the prohibition against violating certain types of protection orders, by violating a protection order issued or consent agreement approved under R.C. 2151.34 or 3113.31 and that this person is considered a child for the purposes of the violation of the prohibition against violating a protection order. (R.C. 2152.01(C)(7).)

## **Inclusion of foster parents as victims under the domestic violence laws**

### **The criminal offense of domestic violence**

#### **Existing law**

Existing law prohibits a person from doing any of the following (R.C. 2919.25):

- (1) Knowingly causing or attempting to cause physical harm to a family or household member (a violation of which is a M1, F4, or F3);
- (2) Recklessly causing serious physical harm to a family or household member (a violation of which is a M1, F4, or F3);
- (3) By threat of force, knowingly causing a family or household member to believe that the offender will cause imminent physical harm to the family or household member (a violation of which is a M4, M2, or M1).

A violation of any of these prohibitions is the offense of "domestic violence."

Current law defines a "family or household member" as any of the following persons (R.C. 2919.25(F)(1)):



(1) Any of the following persons who is residing or has resided with the offender;

(a) A spouse, person living as a spouse, or a former spouse of the offender;

(b) A parent or child of the offender, or another person related by consanguinity or affinity to the offender;

(c) A parent or a child of a spouse, person living as a spouse, or a former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

(2) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

### **Operation of the bill**

The bill adds a foster parent to the definition of "family or household member," so that a "family or household member" means, among other persons, a parent, a foster parent, or a child of the offender, or another person related by consanguinity or affinity to the offender (R.C. 2919.25(F)(1)(a)(ii)).

### **Shelters for domestic violence victims**

#### **Existing law**

R.C. 3113.33 to 3113.40 establishes a funding mechanism for shelters for domestic violence victims. Under these provisions, "domestic violence" means attempting to cause or causing bodily injury to a family or household member by threat of force in fear of imminent physical harm (R.C. 3113.33(A).) Current law defines a "family or household member" similarly to the definition in the offense of domestic violence and the domestic violence civil protection statute as meaning one of the following (R.C. 3113.33(B)):

(1) Any of the following who is residing or has resided with the person committing the domestic violence:

(a) A spouse, a person living as a spouse, or a former spouse of the person committing the domestic violence;

(b) A parent or child of the person committing the domestic violence, or another person related by consanguinity or affinity to the person committing the domestic violence;

(c) A parent or a child of a spouse, person living as a spouse, or former spouse of the person committing domestic violence, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person committing domestic violence.

(d) The dependents of any person listed in (a), (b), or (c), above.

(2) The natural parent of any child of whom the person committing the domestic violence is the other natural parent or is the putative other natural parent.

### **Operation of the bill**

The bill expands the definition of "family or household member" in that law to include a foster parent. (R.C. 3113.33(B)(1)(b).)

### **Attorney General's representation of a Court of Appeals judge or an employee of a Court of Appeals**

Existing law provides that upon the receipt of a written request by any officer or employee, the Attorney General generally must represent and defend the officer or employee in any civil action instituted against the officer or employee (R.C. 109.361--not in the bill). Existing law defines in part "officer or employee" to include a person who, at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the state (R.C. 109.36(A)(1)(a)). "State" means the state of Ohio, including but not limited to, the General Assembly, the Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions. (R.C. 109.36(B).) "Employer" means the General Assembly, the Supreme Court, any office of an elected state officer, or any department, board, office, commission, agency, institution, or other instrumentality of the state of Ohio that employs or contracts with an officer or employee or to which an officer or employee is elected or appointed (R.C. 109.36(D)). The bill includes "Courts of Appeals" within the definition of both "state" and "employer," thereby generally requiring the Attorney General to represent a Court of Appeals, a Court of Appeals judge, or an employee of a Court of Appeals in any civil action instituted against that judge or employee if that judge or employee submits a written request to the Attorney General.

### **Ohio Law Enforcement Gateway**

Existing law allows the Superintendent of the Bureau of Criminal Identification and Investigation to establish and operate a statewide communications network to gather and disseminate information, data, and statistics for the use of law enforcement

agencies and for other specified uses. The bill designates this network as the Ohio Law Enforcement Gateway. (R.C. 109.57(C)(1).)

The bill permits the Attorney General to adopt rules under R.C. Ch. 119. establishing guidelines for the operation of and participation in the Ohio Law Enforcement Gateway. The rules may include criteria for granting and restricting access to information gathered and disseminated through the Ohio Law Enforcement Gateway. The Attorney General may appoint a steering committee to advise the Attorney General in the operation of the Ohio Law Enforcement Gateway that is comprised of persons who are representatives of the criminal justice agencies in this state that use the Ohio Law Enforcement Gateway and is chaired by the Superintendent or the Superintendent's designee. (R.C. 109.57(C)(4).)

Existing law provides that the certain specified information and materials furnished to the Superintendent pursuant to R.C. 109.57(A) and certain specified information and materials furnished to any board or person under R.C. 109.57(F) or (G) are not public records under R.C. 149.43. The bill provides that information, data, and statistics gathered or disseminated through the Ohio Law Enforcement Gateway also are not public records under R.C. 149.43. (R.C. 109.57(D).)

The bill also prohibits a person from knowingly gaining access to, attempting to gain access to, causing access to be granted to, or disseminating information gained from access to the Ohio Law Enforcement Gateway without the consent of, or beyond the scope of the express or implied consent of, the Superintendent of the Bureau of Criminal Identification and Investigation. Whoever violates this prohibition is guilty of unauthorized use of the Ohio Law Enforcement Gateway, a felony of the fifth degree. (R.C. 2913.04(D) and (I).) The bill also makes technical, cross-reference changes to R.C. 2913.04.

### **Butler County Juvenile Court jurisdiction**

Under existing law, the judges of the division of domestic relations of the Butler County Court of Common Pleas have assigned to them all divorce, dissolution of marriage, legal separation, and annulment cases coming before the court, except in cases that for some special reason are assigned to some other judge of the court of common pleas. The judges of the court of common pleas whose terms begin on January 3, 1987, and January 2, 2003, and successors, have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the Butler County Court of Common Pleas, are elected and designated as judges of the court of common pleas, juvenile division, and are the juvenile judges as provided in the juvenile law (R.C. Ch. 2151. and 2152.), with the powers and jurisdictions conferred by the juvenile law.

The bill provides that the judges of the division of domestic relations also have concurrent jurisdiction with the judges of the juvenile division of the Butler County Court of Common Pleas with respect to and may hear cases to determine the custody, support, or custody and support of a child who is born of issue of a marriage and who is not the ward of another court of this state, cases commenced by a party of the marriage to obtain an order requiring support of any child when the request for that order is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, an action for support, or an action that is within the exclusive original jurisdiction of the juvenile division of the Butler County Court of Common Pleas and that involves an allegation that the child is an abused, neglected, or dependent child, and post-decree proceedings and matters arising from those types of cases. (R.C. 2301.03(K)(1).) The bill further provides that, except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the judges of the juvenile division do not have jurisdiction or the power to hear and cannot be assigned, but have the limited ability and authority to certify, any case commenced by a party of a marriage to determine the custody, support, or custody and support of a child who is born of issue of the marriage and who is not the ward of another court of this state when the request for the order in the case is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation (R.C. 2301.03(K)(2)). The bill also makes cross references to these provisions with the law regarding the exclusive original jurisdiction of the juvenile court in cases involving a determination of the custody of any child not a ward of another court of this state or cases involving a request for an order for the support of any child under certain circumstances (R.C. 2151.23(A)(2) and (1)).

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## COMMENT

1. "Sexually oriented offense" means any of the following violations or offenses committed by a person, regardless of the person's age (R.C. 2950.01(A)):

(a) A violation of R.C. 2907.02 (rape), R.C. 2907.03 (sexual battery), R.C. 2907.05 (gross sexual imposition), R.C. 2907.06 (sexual imposition), R.C. 2907.07 (importuning), R.C. 2907.08 (voyeurism), R.C. 2907.21 (compelling prostitution), R.C. 2907.32 (pandering obscenity), R.C. 2907.321 (pandering obscenity involving a minor), R.C. 2907.322 (pandering sexually oriented matter involving a minor), or R.C. 2907.323 (illegal use of minor in nudity-oriented material or performance);

(b) A violation of R.C. 2907.04 (unlawful sexual conduct with a minor) when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct, the other person did not consent to the sexual conduct, and the offender previously has not been convicted of or pleaded guilty to a violation of

R.C. 2907.02, R.C. 2907.03, or R.C. 2907.04 or a violation of former R.C. 2907.12 (felonious sexual penetration);

(c) A violation of R.C. 2907.04 when the offender is at least four years older than the other person with whom the offender engaged in sexual conduct or when the offender is less than four years older than the other person with whom the offender engaged in sexual conduct and the offender previously has been convicted of or pleaded guilty to a violation of R.C. 2907.02, R.C. 2907.03, or R.C. 2907.04 or a violation of former R.C. 2907.12;

(d) A violation of R.C. 2903.01 (aggravated murder), R.C. 2903.02 (murder), or R.C. 2903.11 (felonious assault) when the violation was committed with a sexual motivation;

(e) A violation of R.C. 2903.04(A) (involuntary manslaughter by causing the death of another or the unlawful termination of another's pregnancy as a proximate result of committing or attempting to commit a felony) when the offender committed or attempted to commit the felony that is the basis of the violation with a sexual motivation;

(f) A violation of R.C. 2903.211(A)(3) (menacing by stalking if the victim of the offense is an officer or employee of a public children services agency or a private child placing agency);

(g) A violation of R.C. 2905.01(A)(1), (2), (3), or (5) (kidnapping) when the offense is committed with a sexual motivation;

(h) A violation of R.C. 2905.01(A)(4) (kidnapping with intent to engage in sexual activity against victim's will);

(i) A violation of R.C. 2905.01(B) (kidnapping involving the removal or restraint of the victim) when the victim of the offense is under 18 years of age and the offender is not a parent of the victim of the offense;

(j) A violation of R.C. 2905.02(B) (abduction with sexual motivation), R.C. 2905.03(B) (unlawful restraint with sexual motivation), R.C. 2905.05(B) (criminal child enticement with sexual motivation), R.C. 2919.22(B)(5) (endangering children committed by enticing, coercing, permitting, encouraging, compelling, hiring, employing, using, or allowing a child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter);

(k) A violation of any former Ohio law, any existing or former municipal ordinance or law of another state or the United States, any existing or former law applicable in a military court or in an Indian tribal court, or any existing or former law of any nation other than the United States that is or was substantially equivalent to any offense listed in (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) above;

(l) Any attempt to commit, conspiracy to commit, or complicity in committing any offense listed in (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11) above.

2. A person commits "felonious assault" by doing any of the following (R.C. 2903.11(A) and (B)):

(a) Knowingly causing serious physical harm to another or to another's unborn;

(b) Knowingly causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance;

(c) With knowledge that the person has tested positive as a carrier of a virus that causes AIDS, knowingly doing any of the following:

(i) Engaging in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(ii) Engaging in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes AIDS;

(iii) Engaging in sexual conduct with a person under 18 years of age who is not the spouse of the offender.

3. A person commits "aggravated assault" if, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, knowingly causes serious physical harm to another or another's unborn or causes or attempts to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance (R.C. 2903.12(A)).

4. A person commits "assault" by knowingly causing or attempting to cause physical harm to another or to another's unborn or recklessly causing serious physical harm to another or to another's unborn (R.C. 2903.13(A) and (B)).

5. A person commits "aggravated menacing" by knowingly causing another to believe that the offender will cause serious physical harm to the person or property of

the other person, the other person's unborn, or a member of the other person's immediate family (R.C. 2903.21(A)).

6. A person commits "menacing by stalking" by, as a result of 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; 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 knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person; or violating the above-described provisions with a sexual motivation (R.C. 2903.211(A)).

7. A person commits "menacing" by knowingly causing another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family (R.C. 2903.22(A)).

8. A person commits "aggravated trespass" by entering or remaining on the land or premises of another with purpose to commit on that land or those premises a misdemeanor, the elements of which involve causing physical harm to another person or causing another person to believe that the offender will cause physical harm to the other person (R.C. 2911.211(A)).

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## HISTORY

ACTION	DATE
Introduced	02-17-09
Reported, H. Civil & Commercial Law	06-17-09
Passed House (97-0)	06-24-09
Reported, S. Judiciary - Civil Justice	12-03-09
Recommitted to S. Judiciary - Civil Justice	02-24-10
Re-reported, S. Judiciary - Civil Justice	---

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