



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Aida S. Montano

Sub. S.B. 7

132nd General Assembly
(As Passed by the General Assembly)

- Sens.** Bacon and Manning, Obhof, Beagle, Gardner, Uecker, Eklund, LaRose, Skindell, Huffman, Hite, Brown, Schiavoni, Hoagland, Wilson, Balderson, Burke, Coley, Dolan, Hackett, Hottinger, Jordan, Kunze, Lehner, Oelslager, Peterson, Sykes, Tavares, Terhar, Thomas, Williams, Yuko
- Reps.** Manning, Rezabek, Celebrezze, Butler, Conditt, Cupp, Kent, Rogers, Anielski, Antonio, Arndt, Ashford, Barnes, Blessing, Boggs, Boyd, Carfagna, Clyde, Craig, Duffey, Fedor, Galonski, Gavarone, Holmes, Householder, Howse, Hughes, Ingram, Lanese, Leland, Lepore-Hagan, Miller, O'Brien, Patterson, Patton, Perales, Ramos, Reineke, Retherford, Seitz, K. Smith, Sweeney, Sykes, West

Effective date: September 27, 2017

ACT SUMMARY

- Provides that in a prosecution for violating a protection order or consent agreement, it is not necessary to prove that the order or agreement was served on the defendant under certain circumstances.
 - Declares that the intent in enacting this provision is to supersede the holding in *State v. Smith* (2013), so that unperfected service of a protection order (or consent agreement) does not preclude a prosecution for violating a protection order.
 - Expands the circumstances in which the offense of violating a protection order is expressly classified as a fifth degree felony.
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CONTENT AND OPERATION

Introduction

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

Offense of "violating a protection order"

The act expands the circumstances in which the offense of "violating a protection order" applies to a person by stating that in a prosecution, it is not necessary for the prosecution to prove that the protection order (or civil domestic violence consent agreement) was served on the defendant if the prosecution proves both of the following:¹

(1) The defendant was shown the order or consent agreement or a copy, or a judge, magistrate, or law enforcement officer informed the defendant that a protection order or consent agreement had been issued; and

(2) The defendant recklessly violated the terms of the order or agreement.

Continuing law prohibits a person from recklessly violating the terms of a protection order or a civil domestic violence consent agreement. A violation of the prohibition is the offense of "violating a protection order."²

In *State v. Smith* (2013),³ the Ohio Supreme Court held that a person could not be convicted of violating a protection order based on the person's reckless violation of a civil stalking protection order (issued under R.C. 2903.214) unless the order had been "served" on the person before the alleged violation. The Court determined that R.C. 2903.214, as it existed prior to this act, required that the order be served on the person to whom it applies and that the prohibition in the offense incorporated that requirement as an element of the offense. The act declares that the intent in making the change described above is to supersede the Court's holding in *Smith* so that unperfected service of a protection order (or consent agreement) does not preclude a prosecution under the offense of violating a protection order.⁴

Penalty

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

¹ R.C. 2919.27(D).

² R.C. 2919.27(A) and (B)(1).

³ 136 Ohio St.3d 1.

⁴ Section 3 of the act.



- A violation of a civil domestic violence protection order (R.C. 3113.31);
- A violation of a criminal domestic violence protection order (R.C. 2919.26);
- A violation of a consent agreement establishing a juvenile court protection order (R.C. 2151.34), criminal stalking protection order (R.C. 2903.213), civil stalking protection order (R.C. 2903.214), criminal domestic violence protection order, or civil domestic violence protection order (note that only the last of those types of orders expressly provides for consent agreements); or
- Any combination of offenses of aggravated menacing, menacing by stalking, menacing, or aggravated trespass that involved the same person who is the subject of the protection order or consent agreement.⁵

Under continuing law, violating a protection order generally is a first degree misdemeanor, but it is a third or fifth degree felony in specified circumstances. The offense is a fifth degree felony if the offender previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for:

(1) A violation of a juvenile court protection order, a criminal stalking protection order, or a civil stalking protection order (former law did not include in this provision a reference to a civil domestic violence protection order – R.C. 3113.31, or criminal domestic violence protection order – R.C. 2919.26);

(2) Two or more offenses of aggravated menacing, menacing by stalking, menacing, or aggravated trespass that involved the same person who is the subject of the protection order or consent agreement (former law did not include in this provision "any combination of those offenses"); or

(3) One or more offenses of violating a protection order.

The offense is a third degree felony if the offender violates a protection order or consent agreement while committing a felony offense. Continuing law also authorizes the court to require electronic monitoring of the offender for a period not exceeding five years by a law enforcement agency designated by the court.⁶

⁵ R.C. 2919.27(B)(3).

⁶ R.C. 2919.27(B)(2) to (5).

HISTORY

ACTION	DATE
Introduced	01-31-17
Referred to S. Ways and Means	02-01-17
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