



Judicial Impact Statement

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JUDICIAL IMPACT STATEMENT: EX PARTE EXPUNGEMENT AMENDMENTS

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TITLE INFORMATION

To amend mandatory *sua sponte* ex parte expungement language in all five of Ohio's protection order statutes: the Civil Stalking or Sexually Oriented Offense Protection Order (R.C. 2903.214), Criminal Protection Order (R.C. 2903.213), Domestic Violence Civil Protection Order (R.C. 3113.31), Domestic Violence Temporary Protection Order (R.C. 2919.26), and Juvenile Civil Protection Order (R.C. 2151.34) to allow for discretionary sealing of ex parte protection orders and related records on the motion of any party.

IMPACT SUMMARY

This proposal was added to the Ohio Judicial Conference's 2017-18 Legislative Platform in response to language enacted in House Bill 49, the Biennial Budget Bill. The proposal will improve the clarity of the law, the administration of justice, and public confidence in the law in Ohio by providing judicial discretion to determine whether certain ex parte protection orders should be sealed.

BACKGROUND

H.B. 49 (132nd G.A), the Biennial Budget Bill, contained amendments to all five of Ohio's protection order statutes. The Civil Stalking or Sexually Oriented Offense Protection Order (R.C. 2903.214), Domestic Violence Civil Protection Order (R.C. 3113.31), and Juvenile Civil Protection Order (R.C. 2151.34) were all amended to require ex parte order expungement if the court refuses to grant a protection order after a full hearing and either the period for a notice of appeal of the order refusing to grant a protection order has expired or, if the order refusing to grant a protection order is appealed, the order refusing to grant the protection order is affirmed by the appellate courts. The Criminal Protection Order (R.C. 2903.213) and Domestic Violence Temporary Protection Order (R.C. 2919.26) were both amended to require a court that determines, after a full hearing, that an ex parte protection order should be revoked shall revoke the ex parte order and expunge all related records.

The destruction of court records impairs the administration of justice and diminishes public confidence in the law. The Revised Code defines "expunge" as "to destroy, delete, and erase a record as appropriate for the record's physical or electronic form or characteristic so that the record is permanently irretrievable."¹ The H.B. 49

¹ See R.C. 2151.355, 2953.37, and 2953.38.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

amendments to the protection order statutes would require all records relating to an ex parte protection order that does not lead to a protection order after a full hearing to be permanently and irretrievably destroyed, even if the records may contain evidence of criminal conduct, such as photographs or testimony depicting physical violence. This would apply even in domestic violence situations where victims avoid the full hearing or change their testimony for a number of reasons, including manipulation or threats from the perpetrator. If the same parties were involved in subsequent filings, the court would no longer have a record of previous cases to review. If instead of expungement, the ex parte order and related records were sealed, they could be opened and reviewed in limited circumstances such as subsequent domestic violence accusations. This would positively impact the administration of justice and public confidence in the law by preserving court records when needed.

The burden of seeking to have records sealed should fall on the party that wishes to have the records sealed rather than on the court. The H.B. 49 requirement for courts to order expungement on the court's "own motion" creates three distinct problems. First, it requires court personnel to track these cases through a potentially lengthy appellate process. Additional court time would be spent ordering the expungement. This must happen regardless of whether any party seeks expungement. Rather than burden the court with tracking cases where neither party seeks expungement, and requiring mandatory expungement even in troublesome domestic violence cases, the language should be modified to allow for discretionary sealing on a motion from either party.

Second, if an order denying a protection order is appealed, the H.B. 49 language requires expungement when the appellate court taking the last appeal "affirms the order." If the last appeal is to the Supreme Court of Ohio, the appeal would be a discretionary jurisdictional motion. If the motion in support of jurisdiction was declined by the Supreme Court, the order would not be "affirmed." Instead, the Supreme Court's entry would state that jurisdiction is "declined." Without clarification, this language may cause inconsistent application of law and administration of justice.

Finally, there is concern that a court could face liability if they failed to track an order through the appellate process and subsequently failed to expunge the ex parte order.

RECOMMENDATIONS

To address the concerns outlined above, the Ohio Judicial Conference recommends the following amendments to allow for discretionary sealing of ex parte protection orders and related records upon motion of any party. These proposed amendments provide judicial discretion to seal the protection order and related documents after weighing the interests of the moving party against the needs of the government to maintain the records. This balancing test is already utilized in current law (R.C. 2953.32(C)(1)(e) and R.C. 2953.37(D)(1)(d)). The proposal also clarifies the language regarding appeals.

Recommended language for the Juvenile Civil Protection Order (R.C. 2151.34), Civil Stalking or Sexually Oriented Offense Protection Order (R.C. 2903.214) and Domestic Violence Civil Protection Order (R.C. 3113.31):

...

(G)(1) Any proceeding under this section shall be conducted in accordance with the Rules of Civil Procedure, except that a protection order may be obtained under this section with or without bond. An order issued under this section, other than an ex parte order, that grants a protection order, or that refuses to grant a protection order, is a final, appealable order. The remedies and procedures provided in this section are in addition to, and not in lieu of, any other available civil or criminal remedies.²

(2) If as provided in division (G)(1) of this section ~~an order issued under this section~~ the court does not issue a protection order, other than an ex parte order, ~~refuses to grant a protection order~~, the court, ~~on its own~~ upon motion

² Note: The Juvenile Protection Order Statute, R.C. 2151.34, contains additional language specifying that available remedies are "under Chapter 2151. or 2152. of the Revised Code."

of any party, shall may order that the ex parte order issued under this section and all of the records pertaining to that ex parte order be ~~expunged~~sealed after either of the following occurs:

(a) ~~The period of the notice of~~ No party has exercised the right to appeal from the order that refuses to grant a protection order has expired pursuant to Rule 4 of the Ohio Rules of Appellate Procedure; or

(b) ~~The order that refuses to grant the protection order is appealed and an~~ All appellate court to which the last appeal of that order is taken affirms the order rights have been exhausted.

(3) In determining whether to seal the records pertaining to an ex parte protection order, the court shall weigh the interests of the movant in having the records sealed against the legitimate needs, if any, of the government to maintain those records.

...

Recommended language the Criminal Protection Order (R.C. 2903.213) and Domestic Violence Temporary Protection Order (R.C. 2919.26):

...

(D)(2)(b) If at a hearing conducted under division (D)(2)(a) of this section the court determines that the ex parte order that the court issued should be revoked, the court, on its own motion, shall order that the ex parte order ~~that is~~ be revoked and may, on its own motion or upon the motion of any party, order all of the records pertaining to that ex parte order be ~~expunged~~ sealed.

(c) In determining whether to seal the records pertaining to an ex parte protection order, the court shall weigh the interests of the movant in having the records sealed against the legitimate needs, if any, of the government to maintain those records.

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