



# Judicial Impact Statement

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## House Bill 10 128th General Assembly

### Sponsor

Representative Edna Brown

### Status

House Civil and Commercial  
Law Committee

### Version

As Introduced

### TITLE INFORMATION

To amend sections 2151.23, 2903.214, 2919.25, 3113.31, and 3113.33 of the Revised Code to allow a court to issue a civil protection order to a child who has had or has a dating relationship with the respondent if certain offenses are alleged and to include foster parents under the scope of the domestic violence laws.

### IMPACT SUMMARY

The Ohio Judicial Conference supports the provision in House Bill 10 that gives juvenile courts exclusive original jurisdiction over petitions for civil stalking protection orders under R.C. 2903.214 when the respondent to the petition is a minor, a concept that is included on the Ohio Judicial Conference's 2009-2010 Legislative Platform. Enactment of the jurisdictional provisions of House Bill 10 will improve the administration of justice and public confidence in the law by placing jurisdiction over civil protection orders involving juvenile respondents in the judicial forum best equipped to adjudicate those cases, and by giving young victims of violence an appropriate forum in which to seek protection orders that law enforcement can enforce.

Other provisions in House Bill 10 will also impact the administration of justice, including expanding the grounds to obtain civil stalking protection orders when the parties are involved in a teen dating relationship; establishing who has standing to file petitions for protection orders on behalf of juvenile petitioners; and providing a right to counsel for indigent parties to protection order proceedings in juvenile courts. In addition, separate issues raised by the General Assembly with respect to this bill will, if adopted, also impact the administration of justice, including possible amendments to authorize sealing or expunging records of ex parte protection orders when a final order is not issued and expanding electronic monitoring to juvenile respondents to civil stalking protection orders, which would increase the fiscal impact of the bill. The Ohio Judicial Conference is committed to working with the sponsor of House Bill 10 and other legislators with respect to these issues to ensure that the bill will accurately reflect legislative intent while minimizing unintended consequences.

### 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.

**BACKGROUND**

*Protection Orders Available Under Existing State Law:* The Ohio Revised Code currently provides for two types of civil protection orders.<sup>1</sup> The general division of the court of common pleas has jurisdiction to issue a civil stalking protection order under R.C. 2903.214 if the respondent is alleged to have committed a sexually oriented offense or menacing by stalking, which is defined under R.C. 2903.211 as knowingly engaging in a pattern of conduct to cause another person to believe that the offender will cause physical harm or mental distress to the other person. The domestic relations division of the common pleas court has jurisdiction to issue a domestic violence protection order under R.C. 3113.31 if the respondent is a family or household member of the alleged victim and is alleged to have attempted to cause or recklessly caused bodily injury, placed the victim in fear of imminent serious physical harm by the threat of physical force, committed menacing by stalking or aggravated trespass, committed child abuse, or committed a sexually oriented offense.

When a petition for one of these types of civil protection orders is filed, the court may issue an ex parte order to protect the alleged victim and then must hold a full hearing within a statutorily specified time period with notice to the respondent and an opportunity to be heard. Based upon the evidence presented, the court may issue a protection order designed to ensure the safety and protection of the alleged victim. Civil protection orders may be valid for up to five years from the date of issuance and are filed with local law enforcement agencies, which have the power to arrest alleged violators. If the respondent violates a protection order, remedies include punishment for contempt of court by the court that issued the order as well as a separate proceeding for criminal prosecution under R.C. 2919.27 (violation of a protection order), which carries the potential penalty of a first-degree misdemeanor on a first offense and felony penalties for subsequent offenses.

Juvenile courts do not have the authority to issue civil protection orders under existing state law. In the context of a juvenile proceeding, the juvenile court has the authority to issue an order commonly referred to as a “stay-away” or “no-contact” order that is intended to keep a juvenile offender away from an alleged victim. In addition to issuing stay-away orders, juvenile courts also have broad authority to fashion remedies intended to rehabilitate and control the juvenile’s conduct, including but not limited to ordering individual or group counseling sessions, education programs, community service, mediation, and other diversionary programs. However, unlike civil stalking protection orders and domestic violence protection orders issued by common pleas courts under R.C. 2903.214 and 3113.31, stay-away orders issued by juvenile courts are not filed with law enforcement agencies, and law enforcement officers do not have the power to arrest a juvenile accused of violating a stay-away order. The only remedy for violation of a stay-away order is a proceeding for contempt of court in the juvenile court.

*Jurisdictional Concerns:* As noted above, all petitions for civil stalking protection orders under R.C. 2903.214 are heard and decided in the general division common pleas courts, regardless of the age of the parties. This has resulted in common pleas general division courts hearing and deciding petitions alleging misconduct by one juvenile against another. The cases may range from playground “bullying” to more serious instances of teen dating violence.

Unlike juvenile courts, common pleas general division courts do not routinely handle cases involving juvenile misconduct and as a result are generally not as well versed in the root causes of juvenile misconduct. Therefore, common pleas courts will generally not be as attuned to the specific remedies best suited to addressing a juvenile’s misconduct, preventing the juvenile’s recidivism, and putting the juvenile on a course of law-abiding conduct. Moreover, when presented with a petition for a civil stalking protection order under

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<sup>1</sup> Ohio law also provides for two types of temporary protection orders that may be issued by municipal or common pleas courts as a condition of pretrial release in conjunction with criminal proceedings under R.C. 2903.213 and R.C. 2919.26, but House Bill 10 does not impact protection orders in criminal proceedings.

R.C. 2903.214, common pleas courts are limited to granting or denying the petition, and they do not have the range of additional discretionary remedies available to juvenile courts to address the respondent's behavior. However, juvenile courts do not have the authority to issue protection orders that can be enforced by law enforcement.

In the wake of several tragic incidents of teen dating violence in Ohio and as illustrated by testimony before the General Assembly, navigating the existing legal process can be difficult for young people seeking protection orders. Petitioners who have sought civil protection orders from juvenile courts have been denied because juvenile courts do not have currently the statutory jurisdiction to issue those orders, while petitioners who have received stay-away orders from juvenile courts have testified about their frustrations that law enforcement officers do not have the power to arrest juveniles who violate those orders.

*House Bill 247 (127th General Assembly):* In the 127th General Assembly, Representative Edna Brown introduced House Bill 247, a bill aimed at the issue of teen dating violence that would have, among other things, given juvenile courts exclusive original jurisdiction over civil protection orders involving minors. The Judicial Conference cooperated with Representative Brown and other interested parties on amendments to fashion a bill that would achieve its intended purposes while minimizing unintended consequences that could negatively impact Ohio's courts. House Bill 247 was passed by the House and reported by the Senate Judiciary – Civil Justice Committee with significant amendments, but the bill was not enacted during the 127th General Assembly. The Ohio Judicial Conference has continued to work with Representative Brown on the reintroduction of that legislation in its current form as House Bill 10 and appreciates her continued cooperation.

#### **ANALYSIS OF MAIN PROVISIONS**

*Jurisdiction of Juvenile Courts to Issue Civil Stalking Protection Orders:* House Bill 10 gives juvenile courts exclusive original jurisdiction over petitions for civil stalking protection orders under R.C. 2903.214 and domestic violence protection orders under R.C. 3113.31 when the respondent is a minor, which are enforceable for five years or until the minor turns 21, whichever occurs first.<sup>2</sup>

Giving juvenile courts exclusive original jurisdiction over petitions for civil stalking protection orders involving juvenile respondents will provide additional protection to victims by giving petitioners an appropriate forum to seek relief while giving juvenile courts the authority to issue protection orders that law enforcement agencies will recognize and enforce. This will improve the administration of justice by allowing these petitions to be heard and decided by courts that have expertise in child and adolescent behavior as well as a broad range of available discretionary powers to craft specific relief appropriate to the case. For example, a juvenile court could issue a civil stalking protection order against a juvenile respondent that not only orders the respondent to stay away from the petitioner, but also to attend individual or group counseling sessions, participate in educational courses on teen dating violence and anger management, and perform community service in a program for victims of domestic violence. These additional remedies would be intended to mold the respondent's attitudes and behavior to prevent future violent acts, which would help to protect not only the petitioner but also society at large.

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<sup>2</sup> Under the bill, the juvenile court would retain jurisdiction over the respondent until age 21 for purposes of contempt of court proceedings if the respondent violates the protection order. The additional remedy of criminal prosecution would also be available for the reckless violation of a protection order pursuant to R.C. 2919.27. The bill provides that a delinquency proceeding could be filed in the juvenile court if the respondent is still a minor at the time of the alleged violation; however, if the respondent has reached the age of majority by the time of the alleged violation, charges for the reckless violation of the protection order would constitute a separate criminal charge that would be filed in the municipal or common pleas court.

***Expanding the Grounds to Obtain Civil Stalking Protection Orders When the Parties Are Involved in a Teen Dating Relationship:*** Existing law restricts the grounds for obtaining a civil stalking protection order under R.C. 2903.214 to allegations of menacing by stalking or a sexually oriented offense against the person to be protected. House Bill 10 would expand these grounds to include allegations of felonious assault, assault, aggravated menacing, menacing by stalking, menacing, aggravated trespass, or a sexually oriented offense for persons in teen dating relationships. These additional grounds would permit a petitioner to seek a protection order based upon one instance of conduct rather than having to allege a pattern of conduct or a sexually oriented offense as required under current law if the parties have or had a teen dating relationship.<sup>3</sup> The bill defines “dating relationship” as a “social relationship of a romantic or intimate nature” and requires courts to consider the length and nature of the relationship as well as the frequency of interactions between the parties to make this determination. This definition is similar but not identical to the definition of “dating relationship” under the federal Violence Against Women Act that extends domestic violence protections to unmarried adults in dating relationships.

The decision of whether to make protection orders available on additional grounds to parties in teen dating relationships is an important public policy decision within the sound discretion of the General Assembly. The Ohio Judicial Conference is sensitive to concerns expressed by some legislators over having courts inquiring into the details of personal relationships involving juveniles as well as concerns that the teen dating violence provision could create a procedural hurdle for some young victims of violence to obtain a protection order, but Ohio’s judges are also sensitive to Representative Brown’s interest in focusing this bill on teenage dating violence.

***Standing to File a Petition for a Protection Order on Behalf of a Minor:*** Existing law provides that a person may seek relief or any parent or adult household member may file a petition on behalf of any other family or household member for a civil stalking protection order under R.C. 2903.214 or a domestic violence protection order under R.C. 3113.31. House Bill 10 provides that a minor may file a petition on his or her own behalf or any adult may file a petition upon the minor’s request. Based upon statistics compiled from the National Center for Victims of Crime and Break the Cycle’s 2009 State-by-State Teen Dating Violence Report Card, it appears that House Bill 10 would create the broadest standing in the nation for filing petitions for protection orders by or on behalf of minors.

Only two states currently permit nearly all minors to file for a protection order on their own behalf: New Hampshire permits a child of any age to file a petition on his or her own behalf. California permits a child 12 or older to file for a protection order on his or her own behalf but requires a parent or guardian to file on behalf of a child 11 or younger. Seven states (Arizona, Idaho, Iowa, Minnesota, Nevada, Oklahoma, and Washington) permit any child 16 or over to file on his or her own behalf. Five states (Connecticut, New Jersey, Oregon, Utah, and Wyoming) provide that children 16 or older may file for protection orders on their own if they are in dating or sexually intimate relationships or share a child with the alleged abuser; for younger children, or if those criteria are not met, a parent or legal guardian or an adult family or household member must file the petition. Eighteen states do not allow minors to file petitions directly, limiting standing to file a petition for a protection order on behalf of a minor to adult family or household members or to parents or legal guardians.

As noted above, Ohio’s existing civil protection order laws, R.C. 2903.214 and 3113.31, address standing to file petitions by authorizing “any parent or adult household member” to file on behalf of a minor. Determining

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<sup>3</sup> Under the bill, a petitioner who is not able to establish that he or she had a teen dating relationship with the respondent in order to obtain an order on the expanded grounds would still be eligible to petition the juvenile court for a protection order, but only on the grounds of menacing by stalking or a sexually oriented offense.

who has standing to file a petition on behalf of a minor, and whether the introduced version of the bill should be amended to limit the persons who have standing to file on behalf of minors, are public policy decisions within the sound discretion of the General Assembly. However, the Ohio Judicial Conference recommends that if the bill is amended, limiting the adults who may file a petition on a minor's behalf to a parent or adult household member would be consistent with existing state law as well as the laws of most other states.

#### **ANALYSIS OF OTHER ISSUES RAISED DURING GENERAL ASSEMBLY HEARINGS**

The issues discussed below were raised during hearings on House Bill 10 and its predecessor, House Bill 247, before General Assembly standing committees. These issues are important public policy questions within the sound discretion of the General Assembly, and the Ohio Judicial Conference offers the following information to assist legislators during their ongoing deliberations over House Bill 10.

*Sealing or Expunging Records of an Ex Parte Order When a Final Order Is Not Issued:* As debated by the House Civil and Commercial Law Committee with respect to House Bill 10 and previously by the Senate Judiciary – Civil Justice Committee hearings with respect to House Bill 247, existing law does not provide specific statutory authority for a court to seal the record of an ex parte civil protection order if a final order is not issued following a full hearing. A court that has issued an ex parte civil protection order could decline to issue a final order either because the petitioner did not appear to provide evidence supporting his or her allegations at the full hearing or because the court did not find evidence sufficient to issue a final protection order following the full hearing. Several legislators expressed concern over the possibility for abuse by a person who files a petition and obtains an ex parte civil protection order based upon false allegations, and those legislators debated whether the bill should be amended to authorize sealing and expunging the record when a final order is not issued.

Under existing law, R.C. 2151.356 (sealing of juvenile court records) permits juvenile courts to seal records in juvenile proceedings under specified circumstances, including the analogous situation in which a complaint alleging that a child is a delinquent or unruly child or juvenile traffic offender is filed but dismissed. R.C. 2151.356(B)(1) provides that the court shall promptly order the immediate sealing of those records, which does not require the filing of a motion or any other affirmative act by the juvenile; this section could be amended to include sealing the record of an ex parte civil protection order issued against a juvenile when a final order is not issued. R.C. 2151.358 (expungement of juvenile court records) provides that the juvenile court must expunge any record sealed pursuant to R.C. 2151.356 five years after issuing the sealing order or upon the subject's 23rd birthday, whichever is earlier, and that section also contains a procedure by which the subject of the sealed records may petition for an earlier expungement.

In any consideration of sealing and expunging records related to civil protection orders, it is important to note the distinction between an ex parte order (which is an immediate, temporary order issued by the court based only upon allegations by the petitioner) and a final order (which can last for up to five years, is issued only after constitutional due process requirements of notice and an opportunity to be heard have been afforded to the respondent, and is based upon evidence presented to the court by both parties rather than the allegations of only one party). State and federal law require that final orders be filed with law enforcement agencies, and federal law prohibits respondents to certain final protection orders involving domestic violence from possessing guns and ammunition. Moreover, legitimate public interests, including public safety concerns, may be served by making information available on respondents to final protection orders.

*Right to Counsel for Indigent Parties to Protection Order Proceedings in Juvenile Court:* The version of House Bill 247 reported by the Senate Judiciary – Civil Justice Committee during the 127th General Assembly contained a provision that the respondent to a petition for a protection order filed in juvenile court is not

entitled to court-appointed counsel if indigent, whereas the version of House Bill 247 passed by the House did not specifically address the issue of the right to counsel, nor does House Bill 10. However, by operation of an existing law that provides a broad right to counsel to most parties in most proceedings before juvenile courts, House Bill 10 could increase costs to juvenile courts when parties to protection order proceedings are indigent.

There is no constitutional right to court-appointed counsel for indigent respondents in proceedings for civil stalking protection orders under R.C. 2903.214 or domestic violence protection orders under R.C. 3113.31. However, R.C. 2151.352 (right to counsel in juvenile court) provides a much broader statutory right to counsel in proceedings in juvenile courts than the constitutional right to counsel that applies to proceedings in the common pleas courts. R.C. 2151.352 states that “a child, the child’s parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings” in juvenile court, and indigent parties have the right to court-appointed counsel except in specified civil matters including proceedings involving paternity determinations, custody, and child support. Accordingly, if House Bill 10 is enacted as introduced, a juvenile court could be required to appoint counsel for a juvenile respondent and petitioner as well as their respective parents or custodians if all of these persons are indigent. To avoid this result, which could significantly increase costs to juvenile courts, R.C. 2151.352 could be amended to include proceedings for protection orders involving juvenile respondents within the list of exceptions for civil matters in which there is no right to counsel for indigent parties. However, it should be noted that the types of civil proceedings that are exempt from the statutory right to counsel under R.C. 2151.352 typically involve adults rather than juveniles as the primary parties before the court.

In recognizing that Ohio law provides a broad right to counsel for minors in juvenile proceedings, the Supreme Court of Ohio noted that “[a] juvenile typically lacks sufficient maturity and good judgment to make good decisions consistently and sufficiently foresee the consequences of his actions” and therefore “needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings and to ascertain whether he has a defense and to prepare and submit it.” *In re C.S.* (2006), 115 Ohio St.3d 267 (citations omitted.) Similarly, there is a national trend toward expanding the rights of indigent juveniles to court-appointed counsel in legal proceedings, which is implicated with respect to juvenile respondents whose liberty will be restrained if a protection order is granted, including the possibility of being subject to electronic monitoring as discussed below. Also, some juvenile judges have indicated that many juvenile respondents to civil stalking protection orders filed in juvenile courts will likely also be subject to related delinquency charges, and statements made by an unrepresented juvenile petitioner in the context of the protection order proceeding could later be used against the juvenile in a delinquency proceeding resulting in commitment to the Department of Youth Services. In light of these issues, other options would be (1) to amend R.C. 2151.352 to provide that only juvenile respondents, and not other parties, would be entitled to court-appointed counsel if indigent during protection order proceedings in juvenile courts; or (2) to allow the judge discretion to determine on a case-by-case basis when appointment of counsel is necessary in these proceedings.

***Expanding Electronic Monitoring to Juvenile Respondents to Civil Stalking Protection Orders:*** As amended by Sub. House Bill 471 of the 127th General Assembly (effective April 7, 2009), R.C. 2903.214 now requires a court issuing a civil stalking protection order to order electronic monitoring of the respondent if certain criteria are met, the costs of which are to be assessed against the respondent unless he or she is indigent, in which case the costs shall be paid from the state reparations fund under R.C. 2743.191 (reparations fund). If electronic monitoring is to be extended to juvenile respondents under House Bill 10, the Ohio Judicial Conference recommends that the costs should be assessed against the state reparations fund in the case of indigent juvenile respondents, or the ordering of electronic monitoring against juvenile respondents should be discretionary.

**JUDICIAL IMPACT**

*Administration of Justice:* Granting juvenile courts exclusive original jurisdiction over civil protection orders involving minor respondents will improve the administration of justice. The general division courts of common pleas, which have jurisdiction over civil protection orders involving juvenile respondents under existing law, do not generally handle cases involving juvenile misconduct and are not in the best position to fashion appropriate remedies, and it has been reported that some general division courts have refused jurisdiction in these cases, sometimes referring cases with minor respondents to the juvenile courts that have no current authority to issue civil protection orders. On the other hand, the juvenile courts are better equipped to fashion remedies intended to rehabilitate and control juvenile conduct to protect individual petitioners and the public at large. Giving juvenile courts the jurisdiction to issue civil protection orders that are enforceable by law enforcement will put these cases in the judicial forum best suited and best recognized to adjudicate them.

Other provisions in the introduced version of the bill that can be expected to impact the administration of justice in Ohio include expanding the grounds upon which a civil stalking protection order may be obtained when the parties are involved in a teen dating relationship, and establishing who has standing to file a petition for a protection order on behalf of a minor, which are public policy issues within the legislature's sound discretion. Expanding the grounds upon which petitions may be obtained or the persons with standing to file them can be expected to increase the number of petitions that will be filed in Ohio's courts.

*Public Confidence in the Law:* The enactment of House Bill 10's jurisdictional provisions can be expected improve public confidence in two important ways. First, it will make the legal process easier to navigate to give young victims of violence an appropriate forum in which to seek protection orders that law enforcement can enforce. Second, it will provide additional protections to petitioners as well as additional methods to control juvenile respondents' conduct and mold their future behavior to break the cycle of violence.

*Caseload and Workload:* The enactment of House Bill 10 can be expected increase both the caseload and the workload of Ohio's juvenile courts while decreasing caseload and workload in the general division of the common pleas courts. This issue was considered by the Ohio Judicial Conference's Executive Committee, Civil Law & Procedure Committee, Juvenile Law & Procedure Committee, and Ad Hoc Committee on Cross-Jurisdictional Issues, which was created in 2007 to study the potential impact of House Bill 247 and similar proposals being considered by other legislators to change the jurisdiction of Ohio's courts as related to protection orders in the wake of several tragic incidents of teen dating violence in Ohio. It was the consensus of these committees, for the reasons discussed above, that juvenile courts are best equipped to hear and decide petitions for civil stalking protection orders involving juvenile respondents. Despite the expected caseload and workload increases for Ohio's juvenile courts, it is the position of the Ohio Judicial Conference that justice will best be served by placing jurisdiction over protection orders involving juvenile respondents in the judicial forum best equipped to adjudicate them.

*Fiscal Impact:* The enactment of House Bill 10, as introduced, could significantly increase costs to juvenile courts based upon the operation of an existing statute providing a broad right to counsel for indigent parties in proceedings in juvenile courts. This impact could be ameliorated by amending the juvenile right-to-counsel statute to exempt civil protection order proceedings entirely from the operation of the statute, to provide a right to counsel only for indigent juvenile respondents rather than for all indigent parties to the proceedings, or to provide juvenile judges with the discretion to determine when counsel is necessary. In any case, the legislative intent of existing law to provide the services of counsel to children, who are immature in both cognitive and legal sensibilities, has merit and may warrant the fiscal commitment.

In addition, if House Bill 10 is amended to incorporate provisions in the civil stalking protection order statute effective April 7, 2009 requiring courts to order electronic monitoring of respondents when certain criteria are met, this could also significantly increase costs to juvenile courts. Options to reduce the fiscal impact include assessing these costs against the state reparations fund in the case of indigent juvenile respondents, or granting judges discretion to order electronic monitoring against juvenile respondents to avoid unnecessary expenses.

## **CONCLUSION**

The Ohio Judicial Conference, the voice of Ohio's judges, supports the laudatory goals of House Bill 10 to provide additional protections to young victims of violence and endorses giving juvenile courts exclusive original jurisdiction over petitions for civil stalking protection orders involving juvenile respondents. The Ohio Judicial Conference thanks Representative Brown for cooperating with Ohio's judges on this bill and remains committed to working with her and other members of the General Assembly to enact a version of this bill that will accurately reflect legislative intent while minimizing unintended consequences.