

Kevin Bacon

3rd Ohio Senate District

Committees:

Judiciary, Chair

Finance

Finance – Higher Ed Subcommittee

Energy and Natural Resources

Government Oversight and Reform

Insurance and Financial Institutions



Gayle Manning

13th Ohio Senate District

Committees:

Finance, Vice Chair

Education

Local Government, Public Safety, and Veterans Affairs

Rules and Reference

Transportation, Commerce, and Workforce

Finance – Primary and Secondary Education Subcommittee

Sponsor Testimony

Senate Bill 7

Tuesday, March 21st, 2017

Senators Kevin Bacon and Gayle Manning

House Criminal Justice Committee

Chairman Manning, Vice Chairman Rezabek, Ranking Member Johnson, and members of the committee, thank you for the opportunity to provide sponsor testimony on Senate Bill 7. This bill passed out of the Senate by a vote of 32-0. Senate Bill 7 clarifies current law with respect to the issuance of protection orders. This bill is essentially identical to the "As Passed by Senate" versions of Senate Bill 76 and Senate Bill 261 that were unanimously approved in the two previous General Assemblies.

Before detailing the provisions of the bill, it is important to provide the circumstances prompting this legislation. The Ohio Supreme Court in *State v. Smith*, 136 Ohio St.3d 1, ruled that a violent offender was not properly served with a protection order even though he had actual notice of the existence of the order. The case stemmed from a dispute between a couple living in the Columbus area. Their tumultuous relationship motivated the woman to request a protection order against the man. After

a protection order was issued by the court, the man approached the victim at her place of residence. At this time, she physically showed the order to the man and indicated that he could not be near her. The following day he broke into the victim's house and assaulted her. Subsequently, the offender was convicted of violating the protection order. The Court of Appeals sustained the conviction. On Appeal, the Ohio Supreme Court overturned the conviction.

In the majority opinion Justice Kennedy held that even though the offender was aware of the protection order, he could not be charged with violating the order because he was not formally served prior to the break-in incident. Pursuant to Rule 4 of the Ohio Rules of Civil Procedure, and Ohio Revised Code Section 2903.214, with respect to delivery of protection orders, the court must serve the defendant. This requires, if requested by the victim, the Clerk of Courts to issue a copy of the order to the sheriff of the county in which the party to be served resides or may be found, who then formally serves the individual the order. The order is made effective upon service of the defendant. Thus, the problem with Ohio's law is that it does not validate protection orders upon issuance, but rather when the offender is formally served pursuant to section 2903.214 of the Ohio Revised Code.

The circumstances in *State v. Smith* are not uncommon. A person can easily prevent themselves from being served by avoiding their primary place of residence. In

some cases, an order might never be served simply because the offender evades the authorities for an extended period of time. Senate Bill 7, if passed, will provide clarity to the courts and protect victims of menacing by stalking, domestic violence and sexually oriented crimes across the state.

Senate Bill 7 clarifies the existing language for service by establishing that a protection order has been issued pursuant to section 2903.214 of the Revised Code if the person has been served with a copy of the protection order, or has actual notice of the existence of the protection order. In this situation, to be charged with a violation of the temporary protection order, the prosecution must establish that the defendant recklessly violated its terms.

In addition to addressing the issue of service, Senate Bill 7 also clarifies the penalty for violating a protection order in cases where the offender previously has been convicted, pleaded guilty to, or has been adjudicated a delinquent for violating a single or multiple protection orders. This came at the request of the Ohio Prosecuting Attorneys Association, and merely simplifies existing language. The Prosecutors' Association also requested that previous violations of consent agreements are included as penalty enhancements, as well as violations of those pursuant to domestic violence. Additionally, the bill clarifies current law regarding the penalty for two or more violations for the sections cited in (B)(3)(b) of the bill. It establishes that the two or more

violations punishable by fifth degree felony may be two or more violations of the same section, or two or more violations of any combination of the sections cited in (B)(3)(b) of the bill.

According to the Ohio Domestic Violence Network 17,912 civil protection orders were filed in 2013. For the victims of domestic abuse and other violent crimes, protection under the law can make a significant difference in their quality of life. Senator Manning and I have worked extensively with the Legislative Service Commission, The Ohio Domestic Violence Network, and the Ohio Prosecuting Attorneys Association to ensure that we can provide relief for victims of violent crimes. Thank you for your consideration of Senate Bill 7, and at this time we are happy to answer any questions.