

Testimony in Support of SB 7 before House Criminal Justice Committee

Chairman Manning, and fellow Committee Members:

My name is Anne Murray and I am an assistant city prosecutor with Columbus City Attorney Richard C. Pfeiffer Jr.'s Office. I am currently the Director of the Domestic Violence & Stalking Unit and have been a specialized domestic violence prosecutor for nearly twenty years.

I.) Actual Notice Sufficient for Enforcement

The Columbus City Attorney's Office prosecutes more than 4,000 domestic violence cases each year. In these prosecutions, we see repeated situations where offenders know there are protection orders against them and that they're supposed to stay away, but dodge formal service and continue to harass the victim. And we can't prosecute them for it.

Under current law, once a civil protection order is granted by a court, it is not enforceable until it is handed to the offender by a sheriff's deputy or court bailiff. Service by a sheriff's deputy may take days or even weeks to perfect. It is not enough:

- to have a copy of it by any means other than service by a deputy or bailiff,
- to know about the court order, even if told by other law enforcement or court personnel (including the judge) that there is a protection order and the offender needs to stay away from the victim,
- to be present in court when the order is granted IF the offender has not been handed a copy by the sheriff's or the court

Senate Bill 7 would allow the state to prosecute the offender for violating the protection order using evidence that the offender had knowledge of the protection order and yet proceeded to violated it.

II.) Same Requirements to Get Protection Orders/Same Burden to Prove Violation

Some members of the legislature have rightly asked questions to ensure the respondents' rights are protected under this proposed law.

Senate Bill 7 does not alter the procedure for or amount of evidence required to get protection orders – the provisions in this bill are triggered only after a court has found sufficient evidence of danger to the complainant to grant an order.

Senate Bill 7 does not allow for the arrest and prosecution of a person when no protection order exists. Officers must verify orders. If no order is found, no charges are filed.

Senate Bill 7 does not alter the burden to prove a violation. Allowing enforcement when there is actual notice of an order in addition to personal service does not mean we would be convicting unsuspecting individuals who had no idea there was an order in place. In order charge or convict

someone for violating a protection order, we must still prove that the defendant recklessly violated the order. The legal definition of “recklessness” is “a wanton disregard of a known risk.”

In an actual notice case, in order to prove recklessness, there must be some sort of evidence that this was a known risk: for example, a voicemail from the offenders stating they don't care that there's a protection order; an officer's report that they informed the defendant of the order, after which the defendant contacted the victim; proof that the respondent entered as his own attorney on the protection order case, then drove directly to the victim's work to try to talk to her— before we would meet our burden. We have had all of these scenarios, none of which are enforceable now but would be under Senate bill 7.

The current requirement of service by a deputy or court makes proving knowledge of the order simpler. But the current service requirement excepts a very dangerous, potentially lethal group of offenders from enforcement – a group that know about a court order but persist in violating it. Under Senate Bill 7, lack of service by a sheriff's deputy would no longer serve to shield to offenders who are well aware of the existence of their protection orders yet continue to harass, stalk, and terrify their victims without consequence simply because they haven't been handed a copy of the order by a sheriff's deputy or court bailiff.

III.) Expansion of Felony Violations

Under existing law, "violating a protection order" is generally a 1st degree misdemeanor, but is a felony under specified circumstances. Now, if the offender has a previous conviction for violating certain types of protection orders -- juvenile protection orders, civil stalking protection orders, and criminal stalking protection orders – the violation would be a 5th degree felony. This law does not now include the intimate partner protection orders – the Civil Protection Orders (CPOs) and Criminal Domestic Temporary Violence Protection Orders (DVTPOs). Senate Bill 7 seeks to include violations of these orders to the circumstances that can enhance an M-1 to a felony VPO. I firmly agree with this expansion. For all intents and purposes, the amount of evidence required and the due process required to get the orders that are currently included in the enhancement and those we seek to include -- CPOs and DV TPOs – are the same. The policy for enhancement of penalty for prior convictions for VPOs recognizes the danger such violators pose. In fact, we know that partner violators of court orders are some of the most lethal. The expansion would include the family/household protection orders just makes sense.

In conclusion, I strongly urge this Committee to consider these matters when reviewing the SB 7.

Thank you for the opportunity to provide testimony and I welcome any questions you may have.

-Anne M. Murray