

The Ohio Association of Criminal Defense Lawyers
Michael Streng, President
Blaise Katter, Public Policy Chair
OACDL INTERESTED PARTY COMMENTS ON SB28

On behalf of the OACDL, I would like to share some thoughts on protection orders and proposed language that would focus only on those who actually threaten violence to others.

Our concerns with SB28 can be summarized in two areas – first, the wide range of conduct that can constitute a violation of a protection order can range from a simple, innocuous text message on Christmas to violent, threatening behavior. The range of potential conduct is truly massive.

Second, it is an unfortunate reality that the low standard for the issuance of protection orders, and the desire to ensure that all people are properly protected, leads to situations where the use of a protection order is weaponized by parties engaged in domestic litigation.

Therefore, understanding that this bill is designed to target offenders who intentionally violate protection orders in a manner designed to threaten and endanger the safety of the protected, we would propose to amend 2903.21 (aggravated menacing) and 2903.22 (menacing) to enhance penalties for committing this conduct against the subject of a protection order.

2903.21 (aggravated menacing)

(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(B)(1) Whoever violates this section is guilty of aggravated menacing. Except as otherwise provided in this division and division (B)(2), aggravated menacing is a misdemeanor of the first degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, aggravated menacing is a felony of the fifth degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(2) The offense is a felony of the [4th or 3rd] degree if both of the following apply:

(a) The offender knowingly violates this section against a person who has a protection order against the offender; and

(b) The person has previously been convicted of a violation of RC 2919.27

(C) As used in this section, "organization" includes an entity that is a governmental employer.

The Ohio Association of Criminal Defense Lawyers
Michael Streng, President
Blaise Katter, Public Policy Chair

2903.22 (Menacing)

(A) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(B)(1) Whoever violates this section is guilty of menacing. Except as otherwise provided in this division or division (B)(2), menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree or, if the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children services agency or private child placing agency, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties, a felony of the fourth degree.

(2) The offense is a felony of the [5th or 4th] degree if both of the following apply:

(a) The offender violates this section against a person who has a protection order against the offender; and

(b) The person has previously been convicted of a violation of RC 2919.27

(C) As used in this section, "organization" includes an entity that is a governmental employee

SUMMARY

We believe the above language is far superior to enhanced penalties for subsequent violations of a protection order because this language is targeted to punishing only those acts which constitute threats of violence or intimidation. Frankly, since innocent or non-threatening behavior can constitute violations of protection orders, enhancing the penalties for that section brings with it the potential for extreme disparity and unjust results.

If this bill is intended to target those people who continue to threaten a person, even after the issuance of a protection order, these enhanced penalties will apply to actually punish the concerning behavior. The menacing statutes encompass reasonable threats to both person and property, and therefore are much more aligned with the behavior that is targeted, without the danger of overbreadth.

The OACDL takes no joy in recommending increasing the amount of felony offenses in the code and does so only with careful consideration. However, if the intent of this Legislature is to crack

The Ohio Association of Criminal Defense Lawyers

Michael Streng, President

Blaise Katter, Public Policy Chair

down on legitimate threats of violence against a person with a protection order, then this language and the increased penalties most cleanly and clearly targets those offenders without the concern of sweeping up innocent behavior. Being “Smart on Crime” requires careful attention to making sure the language only targets the specific behavior that is targeted, without overbroadly sweeping in less culpable conduct. I submit that the above language better achieves that goal.

I appreciate your consideration of the proposed language.