



Office of the Ohio Public Defender

Timothy Young, State Public Defender

Testimony in Opposition of SB28 Protection Order Violation Sponsor Senator Hottinger

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to testify on behalf of the Ohio Public Defender in opposition of Senate Bill 28 (SB28).

Increasing the offense level for violations of a protection order in hopes of reducing recidivism fails to recognize the complex relationships that are frequently the backdrop for many protection orders. Many individuals under a protection order have relationships with the protected party - they are married, they own property together, or they have children together. For this reason, it is not uncommon for a protected party to initiate the contact, despite a protection order, so the two can discuss personal and familial matters. There is no penalty for a protected party who violates a protection order. However, the individual under the protection order can be sent to prison for simply responding.

During previous testimony, it was pointed out that under this bill, an individual could be convicted of a felony of fourth or third degree for simply sending a text that says, "I miss you." This concern is accurate. Proponents tried to elevate some of this concern by testifying that these offenses would be sealable. That is not entirely accurate. As this committee knows, the bill makes violating a protection order a felony of the fourth degree if the individual has prior violation of a protection order conviction; two menacing, aggravated menacing, or aggravated trespass convictions; or a prior conviction for menacing by stalking. If an individual has a conviction for aggravated menacing or menacing by stalking, that individual is ineligible to have their record sealed. Therefore, many of the people convicted of the fourth-degree felony would not be eligible to seal their record. The bill also makes violating a protection order a felony of the third degree if the individual has been convicted of two or more violations of a

protection; three or more offenses of menacing, aggravated menacing, or aggravated trespass; or two or more menacing by stalking offenses. Individuals attempting to seal a felony of third degree are ineligible to seal their record if they have been convicted of more than one felony or more than one misdemeanor and one felony offense. Applying this rule to the bill, no individual convicted of a third-degree felony violating a protection order would be able to seal their record.

Proponents of this bill supported their claims that this bill is needed by providing anecdotes about individuals stalking an individual repeatedly and only serving a year in prison for each conviction. In the cases described to this committee, those individuals could have been charged with a third-degree felony violation of a protection order under current law. If an individual commits a felony while violating a protection order, it is a felony of the third degree. In those stories, the individual was likely committing a felony while violating the protection order because menacing by stalking is a felony of the fourth degree if the individual has a prior menacing by stalking conviction, the individual made threats while committing menacing by stalking, or the individual committed trespass at the victim's home, place of employment, or school while committing menacing by stalking. In these rare instances where the behavior is extreme, the problem is not that the law provides for inadequate penalties currently, the problem is that prosecutors are not using all the tools currently available to them in the Ohio Revised Code.

The bill has great cost, not only the Ohioans charged under the bill who will not be able to seal their record, but also, to Ohio taxpayers. The Legislative Service Commission has estimated that SB28 could cost Ohio between \$1.8 million and \$2.4 million dollars annually. Increasing the offense level for violations of protection orders not only increases the cost to DRC, which was the focus of the LSC analysis, but also the local counties. Individuals with higher level felony offenses often receive higher bonds and, as result, are more likely to be incarcerated pretrial. The money spent in response to this bill would be better spent addressing the root causes that lead to the protection order for most people.



That money could be used to require these individuals to participate in anger management, substance abuse counseling, behavioral counseling, mental health counseling, and family counseling – to give just a few examples.

The harsher penalties of SB28 will not only impact those rare cases discussed by the proponents, it will also impact estranged spouses or parents who answer a call or text. At the core of many protection order violations is a volatile, yet consensual, relationship. Reductions in the number of protection order violations will be achieved by assisting individuals with the concerns that caused the protection order. Increasing the offense level will just cost Ohioans more money.

Thank you for the opportunity to speak today before your committee. I am happy to answer questions at this time.

