

**House Bill 49 – State Budget
Opponent Testimony**

HB 49 as passed by the Ohio House provides for “Expungement of ex parte orders and the records pertaining to it if a court does not grant, after a full hearing, certain domestic violence, stalking or juvenile protection orders.” This or similar language is added to all of the protection order statutes. (R.C. 2151.34, 2903.213, 2903.214, 2919.26, and 3113.31.)

On behalf of ACTION OHIO Coalition For Battered Women, I oppose the expungement of ex parte orders and the records pertaining to it if a court does not grant, after a full hearing, protection orders.

But I support codifying the Schussheim Decision, which allows for the sealing of ex parte orders and records pertaining to it based on the judge’s discretion when there are “unusual and exceptional circumstances and when the interests of the party seeking expungement outweigh the legitimate need of the government to maintain the records.” In this case, the judge must balance the interests of both parties, the party seeking the order and the party who is subject to the protection order against the need to maintain records.

In the Schussheim Case, the domestic violence victim made a motion to dissolve the order after the magistrate had issued the order (to expire in one year). The subject to the order argued that his constitutional right to privacy was violated and he was experiencing a barrier to employment by the accessibility of the ex parte order and records pertaining to it. In addition, the subject to the order argued that he had not been charged with domestic violence. Given these facts, the judge used his discretion to issue the decision to seal the court records, benefiting the subject to the protection order and at the same time not impacting the domestic violence victim adversely.

Three women are killed every day in this country as the result of domestic violence. Frequently people related to the victim or people who have close contact respond with amazement when a fatality occurs. Silence and secrecy typically surround an abusive household. Nevertheless, domestic violence is a serious and all too common problem in the U.S.

Applying for a protection order and following through with the full hearing signals the victim’s resolve to take action to protect herself and her children. Consequently, the court’s records of this action can have lasting value – for the victim and for the court, even when the court does not grant the order.

When the court does not grant the protection order, there could be a variety of reasons – none of which deny that the violence did occur.

- 1) Evidence (such as pictures, medical records or witness statement) may not exist or may not be provided (by the victim, advocate or attorney).
- 2) The victim may not have an attorney to represent her interests.
- 3) The victim may not have a legal advocate from the local shelter who can serve to corroborate that the violence is real and the protection order greatly needed.

The dynamics of domestic violence is about power and control. Individuals who exhibit the behavior may appear particularly protective of their partner at the beginning of the relationship. As time passes, the controlling individual becomes more and more aggressive and demanding, using various types of control – psychological, verbal, threatening behaviors, and finally physical violence. Typically these individuals have engaged in a series of controlling relationships over time.

Many victims remain with the abuser out of fear, sense of obligation to help him, need to protect children born of the relationship, and lack of support and/or resources to leave. Victims with support and/or resources will finally seek to escape and may go into hiding and/or seek protection orders. All of them may not be able to take legal steps to assert their rights in full measure and to obtain a protection order. But they all can be part of the history of an individual with multiple abusive relationships. And various court records could substantiate that fact.

Records of ex parte orders and related information can provide a valuable history of the abuser's past domestic violence relationships and could corroborate a victim's need to obtain a protection order at some time in the future. If expunged, valuable records would not exist and place domestic violence victims at greater risk. Codifying the Schussheim Decision is a middle ground that allows for "unusual and exceptional circumstances" to be weighed and balanced in relationship to the need for maintaining government records. And from my point of view, the Schussheim Decision allows for the judicial discretion needed to help protect a victim's safety.

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HB 49 Opposition to expungement