

OPINION NO. 85-092**Syllabus:**

Pursuant to R.C. 2919.26(C) and (D)(1), a temporary protection order may issue against a person who formerly cohabited outside a common law marital relationship and who allegedly engages in conduct, which is proscribed by R.C. 2919.25, against the person with whom he formerly cohabited.

To: Gregory J. Brown, Ashtabula County Prosecuting Attorney, Jefferson, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 27, 1985

I have before me your opinion request concerning the construction of a portion of Ohio's domestic violence law. Your request letter states:

Section 2919.25 of the Ohio Revised Code includes in the definition of "Family or Household Member" a former spouse and also a person living as a spouse. The Temporary Protection Order allowable under the domestic violence law is of the utmost importance to victims of domestic violence. The issue has arisen whether such remedy is available in the situation where a person formerly lived as a spouse and thereafter came back and assaulted that person.

You ask the following question: "May a temporary protection order issue against a person who formerly lived as a spouse with the complainant where there has been no legal establishment of common law marriage, but only former cohabitation[?]"

I begin the inquiry with a brief discussion of the issuance of temporary protection orders in domestic violence cases. R.C. 2919.25, establishing the crime of domestic violence, states in pertinent part: "(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member. (B) No person shall recklessly cause serious physical harm to a family or household member." R.C. 2919.26 establishes a procedure governing the issuance of a temporary protection order against an alleged violator of R.C. 2919.25. Upon the filing of a complaint that alleges a violation of R.C. 2919.25, the complainant or other designated person may initiate such procedure by filing a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender. R.C. 2919.26(A). In the alternative the court may issue such order upon its own motion. R.C. 2919.26(D)(1). A temporary protection order may issue, however, only "[i]f the court finds that the safety and protection of the complainant or other family or household member of the alleged offender may be impaired by the continued presence of the alleged offender." R.C. 2919.26(C); R.C. 2919.26(D)(1).

As used in R.C. 2919.26(C) and (D)(1) the term "alleged offender" clearly refers to a person who has allegedly violated R.C. 2919.25. As set forth above, R.C. 2919.25(A) states, "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member." Under R.C. 2919.25(B), "[n]o person shall recklessly cause serious physical harm to a family or household member." Your question concerns a person who formerly cohabited with the complainant outside a common law marital relationship. You ask whether such a person who is alleged to have knowingly caused or attempted to cause physical harm or who is alleged to have recklessly caused serious physical harm to the complainant in violation of R.C. 2919.25 may be considered an alleged offender against whom a temporary protection order may issue pursuant to R.C. 2919.26(C) and (D)(1).

R.C. 2919.25(D) defines a "family or household member" for purposes of R.C. 2919.25 and R.C. 2919.26 as follows:

(1) "Family or household member" means a spouse, a person living as a spouse, a former spouse, or a parent, a child, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse, who is residing or has resided with the offender.

(2) "Person living as a spouse" means a person

who is living with another in a common law marital relationship or who is otherwise cohabiting with another. (Emphasis added.)

For purposes of R.C. 2919.25 and R.C. 2919.26, a "family or household member" includes a person living as a spouse, who is residing or has resided with the offender. R.C. 2919.25(D)(1). The term a "person living as a spouse" is further defined as including a person who is cohabiting with another. R.C. 2919.25(D)(2). Thus, for purposes of R.C. 2919.25, a "family or household member" includes a person who is living with another in a common law marital relationship or who is otherwise cohabiting with another, where such person is residing or has resided with the offender.

In the instant situation, the complainant formerly cohabited outside a common law marital relationship with the person about whom you ask and is therefore, a "person living as a spouse" within the meaning of R.C. 2919.25(D). Thus, the complainant fits within the definition of "family or household member" as set forth in R.C. 2919.25(D)(1). Accordingly, a person who formerly cohabited outside a common law marital relationship with a complainant and who allegedly engages in conduct, specifically proscribed by R.C. 2919.25, against the complainant clearly may be considered an alleged offender against whom a temporary protection order may issue pursuant to R.C. 2919.26(C) and (D)(1).

Accordingly, it is my opinion and you are so advised, that pursuant to R.C. 2919.26(C) and (D)(1), a temporary protection order may issue against a person who formerly cohabited outside a common law marital relationship and who allegedly engages in conduct, which is proscribed by R.C. 2919.25, against the person with whom he formerly cohabited.