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*Bill Analysis*  
*Legislative Service Commission*

**Sub. H.B. 137\***  
123rd General Assembly  
(As Reported by S. Judiciary)

**Reps. Carey, Thomas, Taylor, Sulzer, Schuler, Terwilleger, Willamowski, Brading, Ogg, Van Vyven, Pringle, Mead, Evans, Clancy, Mottley, Hollister, Vesper, Olman, Harris, Padgett, Womer Benjamin, DePiero, Callender, Haines, Corbin, Salerno, O'Brien, Grendell, Bateman, Perz, Metzger, Winkler, Sutton, Perry, Wilson, Flannery, Hoops, Amstutz, Logan, Cates**

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**BILL SUMMARY**

- Includes in the "pattern of conduct" required to commit the offense of menacing by stalking actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, or emergency medical services person of any authorized act within the public official's official capacity, and increases the penalty for the offense if any of a list of specified aggravating factors apply.
- Expands the offense of disrupting public services to prohibit a person, purposely by any means or knowingly by damaging or tampering with any property, from substantially impairing the ability of emergency medical services personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.
- Specifies that the offense of disorderly conduct is a misdemeanor of the fourth degree if the offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.

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\* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Expands the offense of misconduct at an emergency to prohibit a person from knowingly hampering the lawful operations of any emergency medical services person engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind.
- Increases the penalty for misconduct at an emergency from a misdemeanor of the fourth degree to a misdemeanor of the first degree if the violation creates a risk of physical harm to persons or property.
- Increases the penalty for obstructing official business to a felony of the fifth degree if the violation creates a risk of physical harm to any person.
- Permits the denial of bail for a person accused of menacing by stalking in circumstances in which it is a felony.
- Expands the list of persons who may request, or be protected by, an anti-stalking, assault, or menacing temporary protection order or by a domestic violence temporary protection order.

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## CONTENT AND OPERATION

### Menacing by stalking

#### Existing law

Existing law prohibits a person, by engaging in a "pattern of conduct," from knowingly causing another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person. A person who violates this prohibition is guilty of menacing by stalking. Generally, menacing by stalking is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to menacing by stalking, menacing by stalking is a felony of the fifth degree.

As used in the offense, "pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents. "Mental distress" means any mental illness or condition that involves some temporary substantial incapacity or mental illness or condition that would normally require psychiatric treatment. (Sec. 2903.211.)

#### Operation of the bill

The bill expands the definition of "pattern of conduct" used in the offense of menacing by stalking. Under the bill, actions or incidents that prevent, obstruct, or delay the performance by a "public official" (see **COMMENT 1**), firefighter, rescuer, or *emergency medical services person* (see **COMMENT 2**) of any authorized act within the public official's official capacity may constitute a "pattern of conduct." (Sec. 2903.211(C).)

The bill also modifies the penalty structure for the offense. Under the bill, menacing by stalking generally remains a misdemeanor of the first degree. But under the bill, menacing by stalking is a felony of the fourth degree if any of the following applies (sec. 2903.211(B)):

- (1) The offender previously has been convicted of menacing by stalking or of aggravated trespass.
- (2) In committing the offense, the offender made a threat of physical harm to or against the victim.



(3) In committing the offense, the offender trespassed on the land or premises where the victim lives, is employed, or attends school.

(4) The victim of the offense is a minor.

(5) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.

(6) While committing the offense, the offender had a deadly weapon on or about the offender's person or under the offender's control.

(7) At the time of the commission of the offense, the offender was the subject of an anti-stalking temporary protection order or anti-stalking civil protection order, regardless of whether the person to be protected under the order is the victim of the offense or another person.

(8) In committing the offense, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises.

(9) The offender previously had been found to be a mentally ill person subject to hospitalization by court order under the criteria set forth in division (B)(1) or (2) of section 5122.01 (i.e., the person, because of his or her mental illness, represents a substantial risk of physical harm to self as manifested by evidence of threats of, or attempts at, suicide or serious self-inflicted bodily harm, or represents a substantial risk of physical harm to others as manifested by evidence of recent homicidal or other violent behavior, evidence of recent threats that place another in reasonable fear of violent behavior and serious physical harm, or other evidence of present dangerousness), or the offender previously had been voluntarily admitted under section 5122.02 and, as the basis for or subsequent to that voluntary admission, the offender was determined to represent a risk to self or others to the extent described in section 5122.01(B)(1) or (2).

### **Disrupting public services**

#### **Existing law**

Existing law prohibits a person, purposely by any means or knowingly by damaging or tampering with any property, from doing any of the following:

(1) Interrupting or impairing television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine

navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupting or impairing public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impairing the ability of law enforcement officers, firefighters, or rescue personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

A person who violates any of these prohibitions is guilty of disrupting public services, a felony of the fourth degree. (Sec. 2909.04.)

### **Operation of the bill**

The bill revises the third prohibition above to additionally prohibit a person, purposely by any means or knowingly by damaging or tampering with any property, from substantially impairing the ability of *emergency medical services personnel* (see **COMMENT 2**) to respond to an emergency or to protect and preserve any person or property from serious physical harm (sec. 2909.04(A)(3) and (C)).

### **Disorderly conduct**

#### **Existing law**

The offense of disorderly conduct contains two prohibitions. The first prohibition prohibits a person from recklessly causing inconvenience, annoyance, or alarm to another by doing any of the following (sec. 2917.11(A)): (1) engaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior, (2) making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person, (3) insulting, taunting, or challenging another, under circumstances in which that conduct is likely to provoke a violent response, (4) hindering or preventing the movement of persons on a public street, road, highway, or right-of-way, or to, from, within, or upon public or private property, so as to interfere with the rights of others, and by any act that serves no lawful and reasonable purpose of the offender, or (5) creating a condition that is physically offensive to persons or that presents a "risk of physical harm to persons or property" (see **COMMENT 3**), by any act that serves no lawful and reasonable purpose of the offender.

The second prohibition prohibits a person, while voluntarily intoxicated, from doing either of the following: (1) in a public place or in the presence of two

or more persons, engaging in conduct likely to be offensive or to cause inconvenience, annoyance, or alarm to persons of ordinary sensibilities, which conduct the offender, if the offender were not intoxicated, should know is likely to have that effect on others, or (2) engaging in conduct or create a condition that presents a "risk of physical harm to the offender or another" (see **COMMENT 3**), or to the property of another. Violation of any statute or ordinance of which an element is operating a motor vehicle, locomotive, watercraft, aircraft, or other vehicle while under the influence of alcohol or any drug of abuse, is not a violation of this second prohibition. If a person appears to an ordinary observer to be intoxicated, it is probable cause to believe that person is voluntarily intoxicated for purposes of this second prohibition. (Sec. 2917.11(B), (C), and (D).)

A person who violates either prohibition is guilty of disorderly conduct. Generally, disorderly conduct is a minor misdemeanor. If the offender persists in disorderly conduct after reasonable warning or request to desist or if the offense is "committed in the vicinity of a school," disorderly conduct is a misdemeanor of the fourth degree. (See **COMMENT 4**.) (Sec. 2917.11(E).)

### **Operation of the bill**

Under the bill, disorderly conduct also is a misdemeanor of the fourth degree if the offense is committed in the presence of any law enforcement officer, firefighter, rescuer, medical person, "emergency medical services person," or other authorized person who is engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind (see **COMMENT 2**) (sec. 2917.11(E) and (F)).

### **Misconduct at an emergency**

#### **Existing law**

Existing law prohibits a person from knowingly doing any of the following (sec. 2917.13(A)):

(1) Hampering the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, or other authorized person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Failing to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.

Nothing in these prohibitions may be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.

A person who violates any of the above prohibitions is guilty of misconduct at an emergency. Generally, misconduct at an emergency is a minor misdemeanor. If the violation creates a "risk of physical harm to persons or property" (see **COMMENT 3**), misconduct at an emergency is a misdemeanor of the fourth degree. (Sec. 2917.13.)

### **Operation of the bill**

The bill expands the offense of misconduct at an emergency to also prohibit a person from knowingly hampering the lawful operations of any "emergency medical services person" engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind (see **COMMENT 2**) (sec. 2917.13(A)(1) and (D)).

The bill also increases the penalty for misconduct at an emergency from a misdemeanor of the fourth degree to a misdemeanor of the first degree if the violation creates a "risk of physical harm to persons or property" (see **COMMENT 3**) (sec. 2917.13(C)).

### **Obstructing official business**

#### **Existing law**

Existing law prohibits a person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a "public official" (see **COMMENT 1**) of any authorized act within the public official's official capacity, from doing any act that hampers or impedes a public official in the performance of the public official's lawful duties. A person who violates this prohibition is guilty of obstructing official business, a misdemeanor of the second degree. (Sec. 2921.31.)

#### **Operation of the bill**

Under the bill, obstructing official business is a felony of the fifth degree if the violation creates a "risk of physical harm to any person" (see **COMMENT 3**). (Sec. 2921.31(B).)

## Denial of bail

### Existing law

Existing law specifies that, on the motion of the prosecuting attorney or on the judge's own motion, the judge in a case must hold a hearing to determine whether an accused person charged with aggravated murder when it is not a capital offense, murder, a felony of the first or second degree, the offense of aggravated vehicular homicide, or a fourth degree felony state OMVI offense under section 4511.19 is to be denied bail. The law provides procedures for the conduct of the hearing, including the right of the accused to have counsel, testify, present witnesses and information, and cross-examine witnesses.

An accused person cannot be denied bail under this provision unless the judge finds by clear and convincing evidence that the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, as described above, finds by clear and convincing evidence that the accused person poses a substantial risk of serious physical harm to any person or to the community, and finds by clear and convincing evidence that no release conditions will reasonably assure the safety of that person and the community. The law provides standards and criteria that the judge must consider in determining whether the accused person poses a substantial risk of serious physical harm to any person or to the community and whether there are conditions of release that will reasonably assure the safety of that person and the community. An order of a court of common pleas denying bail pursuant to this provision is a final appealable order, and the law provides procedures that apply relative to the appeal. (Sec. 2937.222.)

### Operation of the bill

The bill expands the list of offenses to which the existing bail denial provisions apply *to also include the offense of menacing by stalking when it is a felony* (sec. 2937.222(A)).

## Temporary protection orders regarding menacing by stalking or assault or menacing offenses or regarding domestic violence

### Existing law

Temporary protection orders regarding menacing by stalking or assault or menacing offenses. Existing law provides that, except when the complaint involves a person who is a family or household member as defined in section 2919.25, upon the filing of a complaint that alleges the commission of the offense of felonious assault, aggravated assault, assault, aggravated menacing, menacing

by stalking, menacing, or aggravated trespass, or that alleges a violation of a municipal ordinance substantially similar to the offense of assault, aggravated menacing, menacing by stalking, menacing, or aggravated trespass, the *complainant* may file a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under the law. The motion must be filed with the clerk of the court with jurisdiction of the case at any time after the filing of the complaint; if the complaint involves a person who is a family or household member, the *complainant* may file a motion for a domestic violence temporary protection order under section 2919.26.

As soon as possible after the filing of a motion that requests the issuance of a protection order under this provision, but not later than the next day that the court is in session after the filing of the motion, the court must conduct a hearing to determine whether to issue the order. The *complainant* must appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the court finds that the safety and protection of the *complainant* may be impaired by the continued presence of the alleged offender, the court may issue a protection order under this section, as a pretrial condition of release, that contains terms designed to ensure the safety and protection of the *complainant*, including a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the *complainant*.

If the court issues a protection order under this provision that includes a requirement that the alleged offender refrain from entering the residence, school, business, or place of employment of the *complainant*, the order must clearly state that the order cannot be waived or nullified by an invitation to the alleged offender from the *complainant* to enter the residence, school, business, or place of employment or by the alleged offender's entry into one of those places otherwise upon the consent of the *complainant*.

Except when the complaint involves a person who is a family or household member, upon the filing of a complaint that alleges a violation specified above, the court, upon its own motion, may issue a protection order under this provision as a pretrial condition of release of the alleged offender if it finds that the safety and protection of the *complainant* may be impaired by the continued presence of the alleged offender.

A protection order is issued as a pretrial condition of release under this provision: (1) is in addition to, but cannot be construed as a part of, any bail set under the law, (2) is effective only until the disposition of the criminal proceeding arising out of the complaint upon which the order is based or until the issuance of

a civil protection order arising out of the same activities as those that were the basis of the complaint, and (3) cannot be construed as a finding that the alleged offender committed the alleged offense and cannot be introduced as evidence of the commission of the offense at the trial of the alleged offender on the complaint upon which the order is based.

A copy of a protection order issued under this provision must be issued by the court to the *complainant*, to the defendant, and to all law enforcement agencies with jurisdiction to enforce the order. All law enforcement agencies must establish and maintain an index for the protection orders delivered to the agencies. Regardless of whether the petitioner has registered the protection order in the county in which the officer's agency has jurisdiction, any officer of a law enforcement agency must enforce a protection order issued pursuant to this section in accordance with the provisions of the order. (Sec. 2903.213.)

**Temporary protection orders regarding domestic violence.** Existing law also provides that, upon the filing of a complaint that alleges the commission of the offense of domestic violence, a violation of a municipal ordinance substantially similar to domestic violence, the offense of felonious assault, aggravated assault, assault, menacing by stalking, or aggravated trespass that involves a family or household member, or a violation of a municipal ordinance substantially similar to the offense of assault, menacing by stalking, or aggravated trespass that involves a family or household member, the *complainant* may file, or, if in an emergency the complainant is unable to file, the person who made an arrest for the offense may file on behalf of the *complainant*, a motion that requests the issuance of a protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under the law. The motion must be filed with the clerk of the court with jurisdiction of the case at any time after the filing of the complaint.

The existing procedures that apply regarding a complaint filed under this provision, the determination of the complaint, the issuance of a temporary protection order under the provision, and the enforcement of a temporary protection order so issued, are substantively comparable to those described above regarding complaints that pertain to an allegation of menacing by stalking or assault or menacing offenses. (Sec. 2919.26.)

### **Operation of the bill**

The bill modifies the law regarding the persons who may request the issuance of temporary protection orders regarding menacing by stalking or assault or menacing offenses or regarding domestic violence and the persons who may be protected by order of that nature when so issued as follows (secs. 2903.213(A) to (D) and (G) and 2919.26(A) to (D), (G), and (I)):

(1) Under the bill, in addition to the complainant being authorized to request the issuance of either type of order, *the alleged victim or a family or household member of an alleged victim* may request the issuance of the order.

(2) Under the bill, instead of the complainant being required to appear at the hearing regarding a menacing by stalking or an assault or menacing protection order, *the person who requested the order* must appear.

(3) Under the bill, the person to be protected under either type of protection order is expanded to include either the complainant *or the alleged victim of the offense* (note that, regarding a domestic violence order, existing law also provides that the order may be issued for the protection of any family or household member of the alleged offender in addition to the complainant).

(4) Under the bill, either type of protection order, if issued, must be issued *to the alleged victim and to the person who requested the order*, in addition to being issued to the complainant, the defendant, and the appropriate law enforcement agencies.

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## COMMENT

1. "Public official" means any elected or appointed officer, or employee, or agent of the state or any political subdivision, whether in a temporary or permanent capacity, and includes, but is not limited to, legislators, judges, and law enforcement officers (sec. 2921.01--not in the bill).

2. As used in the bill, "emergency medical services person" is the singular of emergency services personnel. "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians-basic, emergency medical technicians-intermediate, emergency medical technicians-paramedic, medical technicians, or other emergency services personnel acting within the ordinary course of their profession. (Secs. 2903.211(C)(3), 2909.04(C), 2917.11(F)(1), and 2317.13(D), and sec. 2133.21(F)--not in the bill.)

3. "Risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or that certain circumstances may exist.<sup>1</sup>

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<sup>1</sup> By contrast, "substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist (sec. 2901.01(A)(8)--not in the bill).

"Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration.<sup>2</sup>

"Physical harm to property" means any tangible or intangible damage to property that, in any degree, results in loss to its value or interferes with its use or enjoyment. "Physical harm to property" does not include wear and tear occasioned by normal use.<sup>3</sup> (Sec. 2901.01(A)(3), (4), and (7)--not in the bill.)

4. An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within 1,000 feet of the boundaries of any school premises.

"School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

"School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

"School premises" means either of the following:

(1) The parcel of real property on which any school is situated, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

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<sup>2</sup> By contrast, "serious physical harm to persons" means any of the following: (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement, or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain. (Sec. 2901.01(A)(5)--not in the bill.)

<sup>3</sup> By contrast, "serious physical harm to property" means any physical harm to property that does either of the following: (a) results in substantial loss to the value of the property, or requires a substantial amount of time, effort, or money to repair or replace, or (b) temporarily prevents the use or enjoyment of the property, or substantially interferes with its use or enjoyment for an extended period of time. (Sec. 2901.01(A)(6)--not in the bill.)

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the state board of education prescribes minimum standards and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed. (Sec. 2917.11(F) and sec. 2925.01(P), (Q), (R), and (S)--not in the bill.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
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