



S.B. 152

124th General Assembly
(As Introduced)

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BILL SUMMARY

- ? Specifically includes the posting of messages through the use of a computer, computer network, computer program, or computer system as an activity that may constitute the "pattern of conduct" that is an element of the offense of "menacing by stalking."
- ? Expands the offense of "menacing by stalking" to specifically prohibit certain types of computer-related cyberstalking.

CONTENT AND OPERATION

Existing law

Menacing by stalking--prohibition

Existing law prohibits a person, by engaging in a "pattern of conduct" (see below), 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 violation of the prohibition is the offense of "menacing by stalking." (R.C. 2903.211(A).)

See "*Background*," below for existing penalties for menacing by stalking, which are not changed by the bill.

Existing law defines the following terms, for use in the offense of "menacing by stalking" (R.C. 2903.211(D)):

(1) "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. 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, firefighter's,

rescuer's, or emergency medical services person's official capacity may constitute a "pattern of conduct."

(2) "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.

(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in R.C. 2133.21, and "public official" has the same meaning as in R.C. 2921.01.

Operation of the bill

The bill modifies the offense of "menacing by stalking" in two ways: (1) it specifically includes the posting of messages through the use of a computer, computer network, computer program, or computer system as an activity that may constitute the "pattern of conduct" that is an element of the offense, and (2) it expands the offense to specifically prohibit certain types of computer-related cyberstalking (certain existing offenses, not in the bill, currently prohibit other types of conduct that also might be considered as constituting cyberstalking--see COMMENT).

Inclusion of computer-related message posting as activities that may constitute a pattern of conduct

Regarding the definition of "pattern of conduct" that applies to the offense of "menacing by stalking," the bill expands the portion of the definition that identifies certain types of actions or incidents that may constitute a pattern of conduct to specifically include within that portion of the definition *the posting of messages through the use of a "computer," "computer network," "computer program," or "computer system"* (see **Definitions added by the bill,** below, for definitions of the terms in quotation marks). The bill does not change the portion of the definition that sets forth the general meaning of the term (i.e., "two or more actions or incidents closely related in time," etc.). Thus, under the bill, the definition of "pattern of conduct" reads as follows (R.C. 2903.211(D)(1); the language added by the bill is in italics):

--"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. 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, firefighter's, rescuer's, or emergency medical services person's official capacity, *or the posting*

of messages through the use of a computer, computer network, computer program, or computer system, may constitute a "pattern of conduct."

Expansion of offense to specifically prohibit certain types of computer-related cyberstalking

The bill expands the conduct that is prohibited under the offense of "menacing by stalking" to specifically include certain types of computer-related cyberstalking. Under the bill, in addition to the conduct prohibited under existing law, a person also is prohibited from posting a message through the use of any "computer," "computer network," "computer program," or "computer system," without the consent of the individual who is the subject of the message, if all of the following apply (R.C. 2903.211(A)(2)):

(1) The person knows or has reason to know that the posting may cause two or more separate, noncontinuous acts of unconsented contact with the victim.

(2) The posting of the message is intended to cause conduct that would make the victim believe that a person will cause physical harm to the victim or make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(3) Conduct arising from the posting of the message would cause a reasonable person to suffer mental distress, and to believe that a person will cause physical harm to the reasonable person or to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(4) Conduct arising from the posting of the message causes the victim to suffer mental distress, and to believe that a person will cause physical harm to the victim or to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

A violation of the new prohibition is the offense of "menacing by stalking" and is subject to the same penalties as is a violation of the existing prohibition that constitutes the offense, as described below in **"Menacing by stalking--penalties"** (R.C. 2903.211(B)).

Definitions added by the bill

The bill adds the following definitions for use in the offense of "menacing by stalking" (R.C. 2903.211(D)(5) to (8)):

(1) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post,

publish, disseminate, or otherwise communicate any information, whether truthful or untruthful, about an individual (R.C. 2903.211(D)(6), enacted by the bill).

(2) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the conduct be avoided or discontinued. Unconsented contact includes, but is not limited to, following or appearing within sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the victim's workplace or residence; entering onto or remaining on property owned, leased, or occupied by the victim; contacting the victim by telephone; sending mail or electronic communications to the victim through the use of any medium, including, but not limited to, the Internet or a computer, computer network, computer program, or computer system; or placing an object on, or delivering or having delivered an object to, property owned, leased, or occupied by the victim (R.C. 2903.211(D)(7), enacted by the bill).

(3) "Victim" means an individual who is the target of conduct elicited by a posted message as described in the new prohibition enacted by the bill or a member of that individual's immediate family (R.C. 2903.211(D)(8), enacted by the bill).

(4) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses. "Computer" includes, but is not limited to, all input, output, processing, storage, computer program, or communication facilities that are connected, or related, in a computer system or network to an electronic device of that nature (R.C. 2903.211(B)(5), by cross-reference to existing R.C. 2913.01).

(5) "Computer network" means a set of related and remotely connected computers and communication facilities that includes more than one computer system that has the capability to transmit among the connected computers and communication facilities through the use of computer facilities (R.C. 2903.211(B)(5), by cross-reference to existing R.C. 2913.01).

(6) "Computer program" means an ordered set of data representing coded instructions or statements that, when executed by a computer, cause the computer to process data (R.C. 2903.211(B)(5), by cross-reference to existing R.C. 2913.01).

(7) "Computer system" means a computer and related devices, whether connected or unconnected, including, but not limited to, data input, output, and storage devices, data communications links, and computer programs and data that make the system capable of performing specified special purpose data processing tasks (R.C. 2903.211(B)(5), by cross-reference to existing R.C. 2913.01).

Background

Menacing by stalking--penalties

Under existing law, the offense of menacing by stalking is penalized as follows (R.C. 2903.211(B)):

(1) Except as provided in (2) or (3), below, it is a misdemeanor of the first degree;

(2) It is a felony of the fourth degree if any of the following applies: (a) the offender previously has been convicted of menacing by stalking or aggravated trespass, (b) in committing the offense, the offender made a threat of physical harm to or against the victim, trespassed on the land or premises where the victim lives, is employed, or attends school, or caused serious physical harm to the premises where the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, (c) the victim of the offense is a minor, (d) the offender has a history of violence, or of other violent acts, toward the victim or any other person, (e) while committing the offense, the offender had or controlled a deadly weapon, (f) at the time of the commission of the offense, the offender was the subject of a protection order issued under R.C. 2903.213 or 2903.214, regardless of the identity of the person to be protected under the order, or (g) prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness.

(3) 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 it is: (a) subject to clause (b), a felony of the fifth degree; or (b) if the offender previously has been convicted of 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.

COMMENT

The following existing offenses, not in the bill, currently prohibit types of conduct that might be considered as constituting cyberstalking:

1. R.C. 2917.21(A) prohibits a person from knowingly making or causing to be made a "telecommunication" (see below), or knowingly permitting a telecommunication to be made from a "telecommunications device" (see below) under the person's control, to another, if the caller does any of the following: (a) fails to identify the caller to the recipient of the telecommunication and makes the telecommunication with purpose to harass or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient, (b) *describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other person engage in sexual activity, and the recipient or another person at the premises to which the telecommunication is made has requested, in a previous telecommunication or in the immediate telecommunication, that the caller not make a telecommunication to the recipient or to the premises to which the telecommunication is made,* (c) *during the telecommunication, commits the offense of "aggravated menacing,"* (d) knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged, (e) *knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.* Providers of a telecommunications service or information service, and officers, employees, and agents of a telecommunications service or information service are exempt, in specified circumstances, from this prohibition. As used in R.C. 2917.21, "telecommunication" means the origination, emission, dissemination, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, a fiber optic, electronic, magnetic, optical, digital, or analog method; and "telecommunications device" means any instrument, equipment, machine, or other device that facilitates telecommunication, including, but not limited to, a computer, computer network, computer chip, computer circuit, scanner, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables the use of a modem.

A violation of this prohibition is the offense of "telecommunications harassment." A violation based on the conduct described in clause (1), (2), (3), or (5) is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. A violation based on the conduct described in

clause (4) of this section generally is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense, but if the violation results in "economic harm" (defined in the section) of \$500 or more but less than \$5,000, it is a felony of the fifth degree, if the violation results in economic harm of \$5,000 or more but less than \$100,000, it is a felony of the fourth degree, and if the violation results in economic harm of \$100,000 or more, it is a felony of the third degree.

2. R.C. 2917.21(B) prohibits a person from making or causing to be made a "telecommunication" (see (1), above), or permitting a telecommunication to be made from a "telecommunications device" (see (1), above) under the person's control, *with purpose to abuse, threaten, or harass another person*. A violation of this prohibition also is the offense of "telecommunications harassment." It is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense.

3. R.C. 2903.21 prohibits a person from knowingly *causing 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*. A violation of this prohibition is the offense of "aggravated menacing." Generally, the offense is a misdemeanor of the first degree. However, 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, it is a felony of the fifth degree or, if the offender previously has been convicted of 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, it is a felony of the fourth degree.

4. R.C. 2903.22 prohibits a person from knowingly *causing 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*. A violation of the prohibition is the offense of "menacing." Generally, the offense is a misdemeanor of the fourth degree. However, 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, it is a misdemeanor of the first degree or, if the offender previously has been convicted of 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, it is a felony of the fourth degree.

5. R.C. 2913.49 prohibits a person from: (a) *obtaining, possessing, or using any "personal identifying information" (see below) of any living or dead individual with the intent to fraudulently obtain credit, property, or services or avoid the payment of a debt or any other legal obligation,* or (b) *creating, obtaining, possessing, or using the personal identifying information of any living or dead individual with the intent to aid or abet another person in violating clause (a).* A violation of either prohibition is the offense of "taking the identity of another." Generally, the violation is a misdemeanor of the first degree. However, if the value of the credit, property, services, debt, or other legal obligation involved in the violation or course of conduct is \$500 or more and less than \$5,000, it is a felony of the fifth degree, if the value of the credit, property, etc., involved is \$5,000 or more and less than \$100,000, it is a felony of the fourth degree, and if the value of the credit, property, etc., involved is \$100,000 or more, it is a felony of the third degree.

As used in this section, "personal identifying information" includes, but is not limited to, the following: the name, address, telephone number, driver's license, driver's license number, commercial driver's license, commercial driver's license number, state identification card, state identification card number, social security card, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, money market account number, mutual fund account number, other financial account number, personal identification number, password, or credit card number of a living or dead individual.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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