



Sub. S.B. 8

125th General Assembly
(As Passed by the General Assembly)

Sens. Austria, Amstutz, Jacobson, Spada, Harris, Mumper, Randy Gardner, Prentiss, Miller, DiDonato, Fedor, Stivers, Herington, Goodman, Carey, Roberts, Brady, Schuring, Armbruster, Schuler, Coughlin, Carnes, Dann, Fingerhut, Hagan, Robert Gardner, Mallory, Nein

Reps. Willamowski, Widowfield, DePiero, Allen, Aslanides, Barrett, Beatty, Boccieri, Brown, Carmichael, Cates, Chandler, Cirelli, Clancy, Daniels, DeBose, Distel, Domenick, C. Evans, D. Evans, Fessler, Flowers, Gibbs, Gilb, Grendell, Hagan, Hartnett, Harwood, Hughes, Kearns, Key, Kilbane, Koziura, Latta, Martin, Mason, McGregor, Niehaus, Otterman, S. Patton, T. Patton, Perry, Price, Raussen, Redfern, Reidelbach, Schaffer, Schlichter, Schmidt, Seaver, Sferra, S. Smith, D. Stewart, J. Stewart, Sykes, Taylor, Ujvagi, Widener, Wolpert, Woodard, Yates

Effective date: August 29, 2003

ACT SUMMARY

- Specifically includes the posting of messages or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device as an activity that may constitute the "pattern of conduct" that is an element of the offense of "menacing by stalking."
- Modifies the definition of "mental distress" that is an element of the offense of "menacing by stalking" to clarify that any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services is "mental distress" whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.
- Adds a new cyberstalking-type prohibition to the offense of "menacing by stalking" that prohibits a person, through the use of any electronic

method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, from posting a message with purpose to urge or incite another to commit a violation of the prohibition that currently constitutes the offense.

- Provides that: (1) the offense of "menacing by stalking" does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection, and (2) a person providing access or connection to or from an electronic method of remotely transferring information not under that person's control is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information it believes is, or will be sent, in violation of either prohibition constituting the offense.
- Specifies that the provisions described in the preceding dot point do not: (1) create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information it believes is, or will be sent, in violation of either prohibition except as otherwise provided by law, or (2) apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of either prohibition constituting the offense of "menacing by stalking" or who knowingly advertises the availability of material of that nature.
- Provides that the fourth degree felony penalty for the offense of "menacing by stalking" applies to a violation of the new prohibition if, as a result of the violation of that prohibition, a third person induced by the offender's posted message engaged in a specified type of threatening conduct to the victim.

CONTENT AND OPERATION

Continuing and prior law

Menacing by stalking--prohibition

Continuing 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).)

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

(1) "Pattern of conduct" was defined to mean 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 prevented, obstructed, or delayed the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity could constitute a "pattern of conduct."

(2) "Mental distress" was defined to mean any mental illness or condition that involved some temporary substantial incapacity or mental illness or condition that would normally require psychiatric treatment.

(3) Continuing law defines "emergency medical services person" as the singular of "emergency medical services personnel" as defined in R.C. 2133.21, "emergency facility person" as the singular of "emergency facility personnel" as defined in R.C. 2909.04, and "public official" to have the same meaning as in R.C. 2921.01.

Menacing by stalking--penalties

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

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

(2) It was a felony of the fourth degree if any of the following applied: (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 was an officer or employee of a public children services agency or a private child placing agency and the offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties it was: (a) subject to clause (b), a felony of the fifth degree; or (b) if the offender previously had 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.

Operation of the act

The act modifies the offense of "menacing by stalking" in five ways: (1) it specifically includes the posting of messages or receipt of information or data through the use of any electronic method of remotely transferring information, as an activity that may constitute the "pattern of conduct" that is an element of the offense, (2) it modifies the definition of "mental distress" that is used in the prohibition that currently constitutes the offense, (3) it expands the offense to specifically prohibit certain types of conduct involving cyberstalking related to an electronic method of remotely transferring information (certain existing offenses, not in the act, currently prohibit other types of conduct that also might be considered as constituting cyberstalking), (4) it enacts exemptions from the offense in specified circumstances that pertain to the provision of access or connection to or from an electronic means of remotely transferring information, and (5) it modifies the penalty provisions for the offense to reflect the new prohibition referred to in (3), above.

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 act 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 or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to a "computer," "computer network," "computer program," "computer system," or "telecommunications device"* (see "**Definitions added by the act**," below, for definitions of the terms in quotation marks). The act 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 act, the definition of "pattern of conduct" reads as follows (R.C. 2903.211(D)(1); the language added by the act 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 or receipt of information or data through the use of an electronic method of remotely transferring information, including, but not limited to a computer, computer network, computer program, computer system, or telecommunications device*, may constitute a "pattern of conduct."

Definition of "mental distress"

Regarding the definition of "mental distress," the act clarifies that any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services is "mental distress," *whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services*. Thus, under the act, "mental distress" means: (1) any mental illness or condition that involves some temporary substantial incapacity, or (2) any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, *whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services*. (R.C. 2903.211(D)(2).)

Related to this, the act specifies that the state does not need to prove in a prosecution of a person charged with menacing by stalking that a person requested

or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in clause (2) of the preceding paragraph (R.C. 2903.211(E)).

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

The act adds a new prohibition to the offense of "menacing by stalking," to specifically prohibit certain types of conduct involving cyberstalking related to an electronic method of remotely transferring information. Under the act, in addition to the conduct prohibited under existing law, a person also is prohibited from posting a message, through the use of any electronic method of remotely transferring information, including, but not limited to, any "computer," "computer network," "computer program," or "computer system," with purpose to urge or incite another to commit a violation of the prohibition that currently constitutes the offense (i.e., with purpose to urge or incite another, by engaging in a pattern of conduct, to knowingly cause a third person to believe that the person engaging in the pattern of conduct will cause physical harm to the third person or cause mental distress to the third person) (R.C. 2903.211(A)(2)).

A violation of the new prohibition is the offense of "menacing by stalking" and is subject to the penalties described below in "**Penalties under the act**" (R.C. 2903.211(B)).

Exemptions under the act from the prohibitions

The act enacts exemptions from the existing prohibition and the new prohibition that constitute the offense of menacing by stalking. Under the act, the section containing the prohibitions does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing access or connection to or from the electronic method of remotely transferring the information, and that do not include the creation of the content of the material that is the subject of the access or connection. The act also provides that, in addition, any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control is not liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of either prohibition. (R.C. 2903.211(F)(1).)

The act specifies that the provisions described in the preceding paragraph do not (R.C. 2903.211(F)(2) and (3)):

(1) Create an affirmative duty for any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control to block the receipt or transmission through its service of any information that it believes is, or will be sent, in violation of either prohibition except as otherwise provided by law.

(2) Apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of either prohibition or who knowingly advertises the availability of material of that nature.

Penalties under the act

The act revises the penalties for menacing by stalking, when it is committed in violation of the existing prohibition or the new prohibition. Under the act, as under continuing law, the offense generally is a misdemeanor of the first degree, and is a felony of the fourth degree or fifth degree in specified circumstances. The act adds language that revises some of the circumstances in which the offense is a felony of the fourth degree. Under the act (R.C. 2903.211(B)):

(1) Except as provided in (2) or (3), below, unchanged from continuing law, the offense is a misdemeanor of the first degree;

(2) The offense is a felony of the fourth degree if any of the following applies (the act's added language is indicated in italics): (a) the offender previously has been convicted of menacing by stalking or aggravated trespass, (b) in committing the offense *under either the existing prohibition or the new prohibition*, the offender made a threat of physical harm to or against the victim, *or, as a result of an offense committed under the new prohibition, a third person induced by the offender's posted message made a threat of physical harm to or against the victim*, (c) in committing the offense *under either the existing prohibition or the new prohibition*, the offender trespassed on the land or premises where the victim lives, is employed, or attends school, *or, as a result of an offense committed under the new prohibition, a third person induced by the offender's posted message trespassed on the land or premises where the victim lives, is employed, or attends school*, (d) the victim of the offense is a minor, (e) 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, (f) while committing the offense *under the existing prohibition*, the offender had a deadly weapon on or about the offender's person or under the offender's control (the act specifies that *this clause does not apply in determining the penalty for a violation of the new prohibition*), (g) 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 whether the person to be protected under the order is the victim of the offense or another person, (h) in committing the offense *under either*

the existing prohibition or the new prohibition, 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, or, as a result of an offense committed under the new prohibition, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises, or (i) 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) Unchanged from continuing law, 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, the offense is either 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, a felony of the fourth degree.

Definitions added by the act

The act 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 message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another (R.C. 2903.211(D)(7), enacted by the act).

(2) "Third person" means, in relation to conduct as described in the new prohibition enacted in the act, an individual who is neither the offender nor the victim of the conduct (this term is not used in the new prohibition but is used in the penalty provisions as they relate to a violation of the new prohibition) (R.C. 2903.211(D)(8), enacted by the act).

(3) "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(D)(6), by cross-reference to existing R.C. 2913.01).

(4) "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(D)(6), by cross-reference to existing R.C. 2913.01).

(5) "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(D)(6), by cross-reference to existing R.C. 2913.01).

(6) "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(D)(6), by cross-reference to existing R.C. 2913.01).

(7) "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 (R.C. 2903.211(D)(6), by cross-reference to R.C. 2903.01).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-23-03	p. 66
Reported, S. Judiciary on Criminal Justice	02-19-03	p. 117
Passed Senate (33-0)	02-26-03	p. 147
Reported, H. Judiciary	04-01-03	pp. 308-309
Passed House (99-0)	05-07-03	pp. 467-468
Senate concurred in House amendments (33-0)	05-13-03	p. 333

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