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Bill Analysis

Legislative Service Commission

Sub. S.B. 146*

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(As Reported by H. Criminal Justice)

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BILL SUMMARY

- Expands the offense of "disrupting public services" to also specifically prohibit a person from knowingly using any computer, computer system, computer network, telecommunications device, or other electronic device or system or the Internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.
- Expands the offense of "criminal mischief" to also prohibit a person, without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, from knowingly doing any of the following: (1) in any manner or by any means, including, but not limited to, computer hacking (defined in the bill), altering, damaging, destroying, or modifying a computer, computer system, computer network, computer software, or computer program or data contained in a computer, computer system, computer network, computer software, or computer program, or (2) introducing a computer contaminant (defined in the bill) into a computer, computer system, computer network, computer software, or computer program.
- Adds language to the prohibition constituting the offense of "unauthorized use of computer, cable, or telecommunication property" that specifies that the prohibition applies to the specified conduct undertaken in any manner and by any means, including, but not limited

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

to, computer hacking (defined in the bill), removes from an element of the offense language that refers to the owner authorizing another person to grant access, and modifies the penalty structure for the offense.

- Enacts a rule of construction that specifies that any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense must be construed to also refer to an existing or former law of Ohio, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense.

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CONTENT AND OPERATION

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, or (3) substantially impairing the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm. A violation of the prohibition is the offense of "disrupting public services," a felony of the fourth degree. (R.C. 2909.04(A).)

As used in these provisions (R.C. 2909.04(B)):

(1) "Emergency medical services personnel" has the same meaning as in R.C. 2133.21, not in the bill;

(2) "Emergency facility personnel" means any of the following: (a) any of the following individuals who perform services in the ordinary course of their professions in an emergency facility: physicians authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery; registered nurses and licensed practical nurses licensed under R.C. Chapter 4723.; physician assistants authorized to practice under R.C. Chapter 4730.; health care workers; and clerical staffs, (b) any individual who is a security officer performing security services in an emergency facility, or (c) any individual who is present in an emergency facility, who was summoned to the facility by an individual identified in clause (a) or (b) of this paragraph.

(3) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(4) "Hospital" has the same meaning as in R.C. 3727.01.

(5) "Health care worker" means an individual, other than an individual specified in (2)(a), (b), or (c), above, who provides medical or other health-related care or treatment in an emergency facility, including medical technicians, medical assistants, orderlies, aides, or individuals acting in similar capacities.

Operation of the bill

The bill adds a new prohibition to R.C. 2909.04. The new prohibition prohibits a person from knowingly using any "computer," "computer system," "computer network," "telecommunications device," or other electronic device or system or the "Internet" so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations (see

"Definitions for "disrupting public services" and "criminal mischief"," below, for definitions of the terms in quotation marks). A violation of the new prohibition also is the offense of "disrupting public services" and is a felony of the fourth degree (the same as the penalty provided for the offense under existing law). (R.C. 2909.04(C).)

Criminal mischief

Existing law

Existing law prohibits a person from doing any of the following: (1) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with the property of another, (2) with purpose to interfere with the use or enjoyment of property of another, employing a tear gas device, stink bomb, smoke generator, or other device releasing a substance that is harmful or offensive to persons exposed or that tends to cause public alarm, (3) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with a bench mark, triangulation station, boundary marker, or other survey station, monument, or marker, (4) without privilege to do so, knowingly moving, defacing, damaging, destroying, or otherwise improperly tampering with any "safety device" (defined in the section), the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose, or (5) with purpose to interfere with the use or enjoyment of the property of another, setting a fire on the land of another or placing personal property that has been set on fire on the land of another, which fire or personal property is outside and apart from any building, other structure, or personal property that is on that land.

A violation of any of the prohibitions is the offense of "criminal mischief." Criminal mischief generally is a misdemeanor of the third degree, but the penalty is increased in specified circumstances as follows: (1) if the violation creates a risk of physical harm to any person, criminal mischief is a misdemeanor of the first degree, (2) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates a risk of physical harm to any person, criminal mischief is a felony of the fifth degree, and (3) if the property involved in the violation is an aircraft, an aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, any other equipment, implement, or material used or intended to be used in the operation of an aircraft, or any cargo carried or intended to be carried in an aircraft and if the violation creates a substantial risk of physical harm to any person or if the property involved in a violation of this section is an

occupied aircraft, criminal mischief is a felony of the fourth degree. (R.C. 2909.07.)

Operation of the bill

The bill adds a new prohibition to R.C. 2909.07. The new prohibition prohibits a person, without privilege to do so, and with intent to impair the functioning of any computer, computer system, computer network, computer software, or computer program, from knowingly doing any of the following: (1) in any manner or by any means, including, but not limited to, "computer hacking," altering, damaging, destroying, or modifying a "computer," "computer system," "computer network," "computer software," or "computer program" or "data" contained in a computer, computer system, computer network, computer software, or computer program, or (2) introducing a "computer contaminant" into a computer, computer system, computer network, computer software, or computer program (see "Definitions for "disrupting public services" and "criminal mischief"," below, for definitions of the terms in quotation marks). A violation of the new prohibition also is the offense of "criminal mischief." (R.C. 2909.07(A)(6) and (C).)

The bill enacts a new penalty structure that applies to violations of the new prohibition described in the preceding paragraph. Under that penalty structure, criminal mischief committed in violation of the new prohibition generally is a misdemeanor of the first degree, but the penalty is increased in specified circumstances as follows: (1) except as otherwise provided in this paragraph, if the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation or the loss to the victim resulting from the violation is \$1,000 or more and less than \$10,000, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation is used or intended to be used in the operation of an aircraft and the violation creates a risk of physical harm to any person, criminal mischief committed in violation of the new prohibition is a felony of the fifth degree, and (2) if the value of the computer, computer system, computer network, computer software, computer program, or data involved in the violation or the loss to the victim resulting from the violation is \$10,000 or more, or if the computer, computer system, computer network, computer software, computer program, or data involved in the violation is used or intended to be used in the operation of an aircraft and the violation creates a substantial risk of physical harm to any person or the aircraft in question is an occupied aircraft, criminal mischief committed in violation of the new prohibition is a felony of the fourth degree. (R.C. 2909.07(C)(1) and (3).)

The bill retains the existing penalty structure that applies to the existing prohibitions that constitute the offense of "criminal mischief," but condenses and



makes technical changes in the provisions that contain the penalties (R.C. 2909.07(C)(1) and (2)).

Definitions for "disrupting public services" and "criminal mischief"

The bill enacts, or incorporates by reference, the following definitions that are relevant to the modifications it makes to the offense of "disrupting public services" and "criminal mischief" (R.C. 2909.01(E) to (G)):

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. 2909.01(E), by reference to an existing provision in R.C. 2913.01).

Computer contaminant means a computer program that is designed to modify, damage, destroy, disable, deny or degrade access to, allow unauthorized access to, functionally impair, record, or transmit information within a computer, computer system, or computer network without the express or implied consent of the owner or other person authorized to give consent and that is of any of the following types or kinds, or is of a type or kind similar to any of the following types or kinds: (1) a group of computer programs commonly known as "viruses" and "worms" that are self-replicating or self-propagating and that are designed to contaminate other computer programs, compromise computer security, consume computer resources, modify, destroy, record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network, (2) a group of computer programs commonly known as "Trojans" or "Trojan horses" that are not self-replicating or self-propagating and that are designed to compromise computer security, consume computer resources, modify, destroy, record, or transmit data, or disrupt the normal operation of the computer, computer system, or computer network, (3) a group of computer programs commonly known as "zombies" that are designed to use a computer without the knowledge and consent of the owner or other person authorized to give consent and that are designed to send large quantities of data to a targeted computer network for the purpose of degrading the targeted computer's or network's performance, or denying access through the network to the targeted computer or network, resulting in what is commonly known as "Denial of Service" or "Distributed Denial of Service" attacks, or (4) a group of computer programs commonly know as "trap doors," "back doors," or "root kits" that are designed to bypass standard authentication software and that are designed to allow access to or use of a computer without the knowledge or consent of the owner or other person authorized to give consent (R.C. 2909.01(F), added by the bill).

Computer hacking means any of the following (R.C. 2909.01(E), by reference to a provision in R.C. 2913.01(II) added by the bill; note that the bill specifies that "computer hacking" does not include the introduction of a computer contaminant, as described above, into a computer, computer system, computer program, or computer network):

(1) Gaining access or attempting to gain access to all or part of a computer, computer system, or a computer network without express or implied authorization with the intent to defraud or with intent to commit a crime;

(2) "Misusing computer or network services" including, but not limited to, mail transfer programs, file transfer programs, proxy servers, and web servers by performing functions not authorized by the owner of the computer, computer system, or computer network or other person authorized to give consent. As used in this paragraph, "misuse of computer and network services" includes, but is not limited to, the unauthorized use of any of the following: (a) mail transfer programs to send mail to persons other than the authorized users of that computer or computer network, (b) file transfer program proxy services or proxy servers to access other computers, computer systems, or computer networks, or (c) web servers to redirect users to other web pages or web servers.

(3) Subject to the last sentence in this paragraph, using a group of computer programs commonly known as "port scanners" or "probes" to intentionally access any computer, computer system, or computer network without the permission of the owner of the computer, computer system, or computer network, or other person authorized to give consent. The group of computer programs referred to in this paragraph includes, but is not limited to, those computer programs that use a computer network to access a computer, computer system, or another computer network to determine any of the following: (a) the presence or types of computers or computer systems on a network, (b) the computer network's facilities and capabilities, (c) the availability of computer or network services, (d) the presence or versions of computer software including, but not limited to, operating systems, computer services, or computer contaminants, (e) the presence of a known computer software deficiency that can be used to gain unauthorized access to a computer, computer system, or computer network, or (f) any other information about a computer, computer system, or computer network not necessary for the normal and lawful operation of the computer initiating the access. The group of computer programs referred to in the two preceding sentences in this paragraph does not include standard computer software used for the normal operation, administration, management, and test of a computer, computer system, or computer network including, but not limited to, domain name services, mail transfer services, and other operating system services, computer programs commonly called "ping," "tcpdump," and "traceroute" and other network

monitoring and management computer software, and computer programs commonly known as "nslookup" and "whois" and other systems administration computer software.

(4) The intentional use of a computer, computer system, or a computer network in a manner that exceeds any right or permission granted by the appropriate principal of the computer, computer system, or computer network.

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. 2909.01(E), by reference to an existing provision in R.C. 2913.01).

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. 2909.01(E), by reference to an existing provision in R.C. 2913.01).

Computer software means computer programs, procedures, and other documentation associated with the operation of a computer system (R.C. 2909.01(E), by reference to an existing provision in R.C. 2913.01).

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. 2909.01(E), by reference to an existing provision in R.C. 2913.01).

Data means a representation of information, knowledge, facts, concepts, or instructions that are being or have been prepared in a formalized manner and that are intended for use in a computer, computer system, or computer network (R.C. 2909.01(E), by reference to an existing provision in R.C. 2913.01).

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. Related to this definition, "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. (R.C. 2909.01(E), by reference to existing provisions in R.C. 2913.01.)

Internet means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the World Wide Web (R.C. 2909.01(G), by reference to existing R.C. 341.42--not in the bill).

Unauthorized use of computer, cable, or telecommunication property

Existing law

Existing law prohibits a person from knowingly gaining access to, attempting to gain access to, or causing access to be gained to any "computer," "computer system," "computer network," cable service, cable system, "telecommunications device," telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service or other person authorized to give consent by the owner (see "**Definitions for "disrupting public services" and "criminal mischief"**" for definitions of the terms in quotation marks). It is an affirmative defense to a charge under this provision that, at the time of the alleged offense, the actor, though mistaken, reasonably believed that the actor was authorized to use or operated the property or that, at the time of the alleged offense, the actor reasonably believed that the owner or person empowered to give consent would authorize the actor to use or operate the property. (R.C. 2913.04(B) and (D), and, by reference, R.C. 2913.03(C)--not in the bill; see **COMMENT.**)

A violation of the prohibition is the offense of "unauthorized use of computer, cable, or telecommunication property," a felony of the fifth degree. (R.C. 2913.04(F).)

Operation of the bill

Prohibition. The bill adds language to the prohibition constituting the offense of "unauthorized use of computer, cable, or telecommunication property" that specifies that the prohibition applies to the specified conduct undertaken in any manner and by any means, including, but not limited to, "computer hacking." The bill also removes, from the element of the prohibition that states that the conduct in question must be without the consent of, or beyond the scope of the consent of, the owner or other person authorized to give consent "by the owner," the qualifier referring to the owner authorizing the other person to give consent to access. Thus, under the bill, the prohibition prohibits a person, *in any manner and*

by any means, including, but not limited to, computer hacking, from knowingly gaining access to, attempting to gain access to, or causing access to be gained to any computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service without the consent of, or beyond the scope of the express or implied consent of, the owner of the computer, computer system, computer network, cable service, cable system, telecommunications device, telecommunications service, or information service or other person authorized to give consent. As used in this provision, "computer hacking" has the meaning described above in "Definitions for "disrupting public services" and "criminal mischief"." (R.C. 2913.04(B) and 2913.01(II).)

Penalty. The bill modifies the penalty for the offense of "unauthorized use of computer, cable, or telecommunication property." Under the bill, the offense generally remains a felony of the fifth degree (R.C. 2913.04(F)(2)), but, if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services, for obtaining money, property, or services by false or fraudulent pretenses, or for committing any other criminal offense "unauthorized use of computer, cable, or telecommunication property is whichever of the following is applicable (R.C. 2913.04(F)(3)):

(1) If the value of the property or services involved or the loss to the victim is \$5,000 or more and less than \$100,000, a felony of the fourth degree;

(2) If the value of the property or services involved or the loss to the victim is \$100,000 or more, a felony of the third degree.

If the victim is an elderly person or a disabled adult, "unauthorized use of computer, cable, or telecommunication property" is whichever of the following is applicable (R.C. 2913.04(F)(4)):

(a) Generally, a felony of the fifth degree;

(b) If the value of the property or services or loss to the victim is \$500 or more and is less than \$5,000, a felony of the fourth degree;

(c) If the value of the property or services or loss to the victim is \$5,000 or more and is less than \$25,000, a felony of the third degree;

(d) If the value of the property or services or loss to the victim is \$25,000 or more, a felony of the second degree.

Definitions for "unauthorized use of computer, cable, or telecommunication property"

The following definitions are relevant to the provisions described above, regarding the offense of "unauthorized use of computer, cable, or telecommunication property":

Defraud means to knowingly obtain, by deception, some benefit for oneself or another, or to knowingly cause, by deception, some detriment to another (R.C. 2913.01(B), unchanged by the bill).

Owner means, unless the context requires a different meaning, any person, other than the actor, who is the owner of, who has possession or control of, or who has any license or interest in property or services, even though the ownership, possession, control, license, or interest is unlawful (R.C. 2913.01(D), unchanged by the bill).

Computer, computer system, and computer network have the same meanings as described above in "**Definitions for "disrupting public services" and "criminal mischief"**" (R.C. 2913.01(M), (N), and (O), unchanged by the bill).

Computer hacking has the same meaning as described above in "**Definitions for "disrupting public services" and "criminal mischief"**" (R.C. 2913.01(II), enacted by the bill).

Cable television service means any services provided by or through the facilities of any cable television system or other similar closed circuit coaxial cable communications system, or any microwave or similar transmission service used in connection with any cable television system or other similar closed circuit coaxial cable communications system (R.C. 2913.01(S), unchanged by the bill).

Gain access means to approach, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of a computer, computer system, or computer network, or any cable service or cable system both as defined in R.C. 2913.04 (R.C. 2913.01(T), unchanged by the bill).

Telecommunication and **telecommunications device** have the same meanings as described above in "**Definitions for "disrupting public services" and "criminal mischief"**" (R.C. 2913.01(X) and (Y), unchanged by the bill).

Telecommunications service means the providing, allowing, facilitating, or generating of any form of telecommunication through the use of a telecommunications device over a telecommunications system (R.C. 2913.01(Z), unchanged by the bill).

Information service means, subject to the next sentence in this paragraph, the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including, but not limited to, electronic publishing. **Information service** does not include any use of a capability of a type described in the preceding sentence for the management, control, or operation of a telecommunications system or the management of a telecommunications service. (R.C. 2913.01(BB), unchanged by the bill).

Elderly person means a person who is 65 years of age or older (R.C. 2913.01(CC), unchanged by the bill).

Disabled adult means a person who is 18 years of age or older and has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment that the person otherwise would be able to perform and that will, with reasonable probability, continue for a period of at least 12 months without any present indication of recovery from the impairment, or who is 18 years of age or older and has been certified as permanently and totally disabled by an agency of Ohio or the United States that has the function of so classifying persons (R.C. 2913.01(EE), unchanged by the bill).

Criminal law rule of construction regarding a reference that defines or specifies a criminal offense

Existing law

Numerous provisions of existing law provide rules of construction that are to be used in interpreting and construing statutes. One of the sections contains a series of rules that apply regarding criminal provisions, which rules provide as follows (R.C. 2901.04):

(1) Except as otherwise provided in (3), below, sections of the Revised Code defining offenses or penalties must be strictly construed against the state, and liberally construed in favor of the accused.

(2) Rules of Criminal Procedure and sections of the Revised Code providing for criminal procedure must be construed so as to effect the fair, impartial, speedy, and sure administration of justice.

(3) Any provision of a section of the Revised Code that refers to a previous conviction of or plea of guilty to a violation of a section of the Revised Code or of a division of a section of the Revised Code must be construed to also refer to a previous conviction of or plea of guilty to a substantially equivalent offense under

an existing or former law of Ohio, another state, or the United States or under an existing or former municipal ordinance.

Operation of the bill

The bill adds an additional rule of construction that will apply regarding criminal provisions. The new rule specifies that any provision of the Revised Code that refers to a section, or to a division of a section, of the Revised Code that defines or specifies a criminal offense must be construed to also refer to an existing or former law of Ohio, another state, or the United States, to an existing or former municipal ordinance, or to an existing or former division of any such existing or former law or ordinance that defines or specifies, or that defined or specified, a substantially equivalent offense. The bill specifies that this new rule of construction is an exception to the existing rule described above in (1) under "**Existing law**" regarding the strict construction of criminal provisions against the state and the liberal construction of them in favor of the accused. (R.C. 2901.04(A) and (D).)

COMMENT

In a related provision that does not specifically pertain to computer-related conduct, existing law also prohibits a person from knowingly using or operating the property of another without the consent of the owner or person authorized to give consent. A violation of this prohibition is the offense of "unauthorized use of property." The penalty ranges, depending upon the circumstances present, from a misdemeanor of the fourth degree to a felony of the second degree. (R.C. 2913.02(A) and (D).)

HISTORY

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