



# Ohio Legislative Service Commission

## Bill Analysis

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### Sub. H.B. 414\*

129th General Assembly  
(As Reported by S. Judiciary)

**Reps.** Anielski, Grossman, Patmon, Combs, Antonio, Goyal, Winburn

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## BILL SUMMARY

- Expands the offense of "menacing by stalking" by additionally prohibiting all of the following:
  - (1) Prohibiting a person, by engaging in a pattern of conduct, from knowingly causing another person to believe that the offender will cause physical harm or mental distress to a member of the other person's immediate family;
  - (2) Prohibiting a person, by engaging in a pattern of conduct, from knowingly causing another person to believe that the offender will cause emotional distress to the other person or a member of the other person's immediate family;
  - (3) Prohibiting a person through the use of any form of written communication from posting a message or using any intentionally written or verbal graphic gesture with either of the following purposes:
    - To violate the prohibition against a person, by engaging in a pattern of conduct, knowingly causing another person to believe that the offender will cause physical harm, mental distress, or emotional distress to the other person or a member of the other person's immediate family;
    - To urge or incite another person to commit a violation described in the preceding dot point;

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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.

- (4) Prohibiting a person through the use of any electronic method of remotely transferring information from posting a message *or using any intentionally written or verbal graphic gesture* with either of the purposes described above in (3).
- Modifies the offense of "telecommunications harassment" by prohibiting a person from knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunication device under the person's control, to another (existing base language of the offense) if the caller makes the telecommunication with purpose to harass, *intimidate, annoy, alarm* (added by the bill), 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 (removes from the prohibition the existing requirement that the caller failed to identify the caller to the recipient of the telecommunication).
  - Expands the offense of "telecommunication harassment" by additionally prohibiting any person from knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunications device under the person's control, to another (existing base language of the offense) if the caller does any of the following:
    - (1) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, annoy, alarm, or harass the recipient.
    - (2) Without a legitimate business purpose, knowingly interrupts the telecommunication service of any person.
    - (3) Without a legitimate business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device.
    - (4) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of any person or any member of the person's family with purpose to abuse, threaten, intimidate, or harass the person.

(5) Makes the telecommunication for the purpose of harassing another person who is under 18 years of age, regardless of whether the person under 18 years of age consents to the harassment.

(6) Urges or incites another person through a telecommunication or other means to harass or participate in the harassment of a person.

(7) Makes a telecommunication with purpose to harass, intimidate, 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.

(8) Knowingly alarms the recipient by making a telecommunication at an hour or hours known to be inconvenient to the recipient, in an offensively or repetitive manner, or without a legitimate purpose.

- Expands the offense of "telecommunication harassment" by additionally prohibiting a person from creating and maintaining an Internet web site or web page that is accessible to one or more persons and that contains statements created for the purpose of abusing, threatening, or harassing another person.
- Specifies that, with respect to conduct taken under a court order issued in relation to a telecommunications harassment investigation or prosecution, a provider of an interactive computer service and any officer, employee, or agent of an interactive computer service will receive the same protection against causes of action and receive the same civil and criminal immunity as a provider of a telecommunications service or information service, or any officer, employee, or agent of a telecommunication service or information service.
- Specifies that the offense of telecommunications harassment 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.
- Specifies that any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control will not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of any prohibition under the offense of telecommunications harassment.
- Specifies that the provisions discussed in the two preceding dot points do not 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 any prohibition under the offense of telecommunications harassment except as otherwise provided by law, and do not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of any prohibition under the offense of telecommunications harassment or who knowingly advertises the availability of material of that nature.

- Specifies that a provider or user of an interactive computer service must neither be treated as the publisher or speaker of any information provided by another information content provider nor held civilly or criminally liable for the creation or development of information provided by another information content provider.

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## CONTENT AND OPERATION

### Menacing by stalking

The bill expands the offense of menacing by stalking.

Existing law prohibits a person, by engaging in a pattern of conduct, from knowingly causing another person to believe that the offender will cause physical harm or mental distress to the other person. The bill expands this prohibition to prohibit a person, by engaging in a pattern of conduct, from knowingly causing another person to believe that the offender will cause physical harm or mental distress to the other person *or a member of the other person’s immediate family* or to believe that the offender will cause *emotional distress to the other person or a member of the other person’s immediate family* (the bill adds the language in italics).<sup>1</sup>

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<sup>1</sup> R.C. 2903.211(A)(1).

Existing law also 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 prior prohibition. The bill expands this prohibition to prohibit a person, through the use of *any form of written communication* or any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, computer system, or *telecommunications device* from posting a message or *using any intentionally written or verbal graphic gesture* with purpose to do either of the following: (1) *commit a violation of the prohibition described in the preceding paragraph*, or (2) urge or incite another to commit a violation of the prohibition described in the preceding paragraph (the bill adds the language in italics).<sup>2</sup>

Existing law, unchanged by the bill, prohibits violating either prohibition described above with a sexual motivation.<sup>3</sup>

The existing prohibitions do not apply in specified circumstances that pertain to the provision of access or connection to or from an electronic method of remotely transferring information (see "**Background – menacing by stalking exemption**," below). A violation of any of the existing prohibitions is the offense of menacing by stalking, which generally is a first degree misdemeanor. If any of nine specified conditions are present, including a prior conviction of this offense or aggravated trespass, specified condition of committing the offense, specified type of victim, or specified type of offender, the offense is a fourth degree felony. If the victim is an officer or employee of a public children services agency or private child placing agency, the offense is a fourth or fifth degree felony depending upon the circumstances of the offense. The existing penalties apply with respect to the expanded prohibitions under the bill.<sup>4</sup>

The bill defines the following terms used in the provisions described above:<sup>5</sup>

**"Emotional distress"** means significant mental suffering or distress that may but does not necessarily require medical or other professional treatment or counseling.

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<sup>2</sup> R.C. 2903.211(A)(2).

<sup>3</sup> R.C. 2903.211(A)(3).

<sup>4</sup> R.C. 2903.211(B).

<sup>5</sup> R.C. 2903.211(D)(10) and (11).

**"Immediate family"** means a spouse, parent, child, sibling, or other person who regularly resides in the household or who within the previous six months regularly resided in the household.

Existing law, unchanged by the bill, defines the following terms used in the provisions described above and in this analysis:<sup>6</sup>

**"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, 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, 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."

**"Mental distress"** means any mental illness or condition that involves some temporary substantial incapacity or 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. In a prosecution for menacing by stalking, the state does not need to prove 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 this definition.

**"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.

**"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.

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<sup>6</sup> R.C. 2903.211(D)(1), (2), and (7), and (E); R.C. 2903.211(D)(6) by reference to R.C. 2913.01, which is not in the bill; and R.C. 2903.211(D)(9) by reference to R.C. 2971.01, which is not in the bill.

"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.

"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.

"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.

"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.

"Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender.

## **Telecommunications harassment**

The bill expands the offense of telecommunications harassment and makes other changes related to that offense.

### **Prohibition and penalty**

#### **Existing law**

Existing law prohibits any person from knowingly making or causing to be made a telecommunication, or knowingly permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:<sup>7</sup>

(1) 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

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<sup>7</sup> R.C. 2917.21(A).

premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient.

(2) 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.

(3) During the telecommunication, violates R.C. 2903.21 (aggravated menacing).

(4) 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.

(5) 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.

Additionally, existing law, unchanged by the bill, prohibits any person from making or causing to be made a telecommunication, or permitting a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.<sup>8</sup>

A violation of either prohibition described above is the offense of telecommunications harassment. The offense generally is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense, but a violation of the portion of the prohibition described in (4) above is a third, fourth, or fifth degree felony on any offense if certain specified circumstances apply.<sup>9</sup>

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<sup>8</sup> R.C. 2917.21(B).

<sup>9</sup> R.C. 2917.21(C).

## Operation of the bill

The bill modifies the first existing prohibition described above by changing the existing prohibited actions described above in (1) and adding eight additional prohibited actions, as follows:

(1) Under the bill, the prohibited action described in (1) above is modified such that a person is guilty of telecommunications harassment if the caller makes the telecommunication (regardless of whether the caller reveals the caller's identity to the recipient) with purpose to harass, *intimidate, annoy, alarm*, 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.<sup>10</sup>

(2) The bill's eight additional prohibited actions prohibit any person from knowingly making or causing to be made a telecommunication or knowingly permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller does any of the following:<sup>11</sup>

(a) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, annoy, alarm, or harass the recipient.

(b) Without a legitimate business purpose, knowingly interrupts the telecommunication service of any person.

© Without a legitimate business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device.

(d) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of any person or any member of the person's family with purpose to abuse, threaten, intimidate, or harass the person.

(e) Makes the telecommunication for the purpose of harassing another person who is under 18 years of age, regardless of whether the person under 18 years of age consents to the harassment.

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<sup>10</sup> R.C. 2917.21(A)(1).

<sup>11</sup> R.C. 2917.21(A)(6) to (13).

(f) Urges or incites another person through a telecommunication or other means to harass or participate in the harassment of a person.

(g) Makes a telecommunication with purpose to harass, intimidate, 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.

(h) Knowingly alarms the recipient by making a telecommunication at an hour or hours known to be inconvenient to the recipient, in an offensively or repetitive manner, or without a legitimate purpose.

Additionally, the bill expands the offense of telecommunications harassment to prohibit a person from creating and maintaining an Internet web site or web page that is accessible to one or more persons and that contains statements created for the purpose of abusing, threatening, or harassing another person.<sup>12</sup>

The bill retains the existing penalty for a violation of the first existing prohibition listed above, as modified by the bill (a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense) and applies that penalty to a violation of the new prohibition it enacts.<sup>13</sup>

### **Prohibition on cause of action and immunity from civil or criminal liability**

Under existing law, no cause of action may be asserted in any court in Ohio against any provider of a telecommunications service or information service, or against any officer, employee, or agent of a telecommunication service or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of any prohibition under telecommunications harassment. Additionally, a provider of a telecommunications service or information service, or an officer, employee, or agent of a telecommunications service or information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or

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<sup>12</sup> R.C. 2917.21(B)(2).

<sup>13</sup> R.C. 2917.21(C)(2).

prosecution of an alleged violation of any prohibition under telecommunications harassment.<sup>14</sup>

The bill specifies that a provider of an interactive computer service as that term is defined in section 230 of Title 47 of the United States Code (see "**Background – definitions of interactive computer service and information content provider,**" below) and any officer, employee, or agent of an interactive computer service will receive the same protection against causes of action and the same civil and criminal immunity as are afforded to the specified providers and persons under the provisions described in the preceding paragraph.<sup>15</sup>

### **Persons providing access or connection to or from an electronic method of remotely transferring information**

The bill specifies that the offense of telecommunications harassment 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. Any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control will not be liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any information that the person believes is, or will be sent, in violation of any prohibition under the offense.<sup>16</sup>

Additionally, the bill specifies that the provisions discussed in the preceding paragraph do not 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 any prohibition under the offense of telecommunications harassment except as otherwise provided by law, and do not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of any prohibition under the

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<sup>14</sup> R.C. 2917.21(D).

<sup>15</sup> R.C. 2917.21(D).

<sup>16</sup> R.C. 2917.21(E)(1).

offense of telecommunications harassment or who knowingly advertises the availability of material of that nature.<sup>17</sup>

A provider or user of an interactive computer service, as defined in section 230 of Title 47 of the United States Code, must neither be treated as the publisher or speaker of any information provided by another information content provider, as defined in section 230 of Title 47 of the United States Code (see "**Background – definitions of interactive computer service and information content provider,**" below), nor held civilly or criminally liable for the creation or development of information provided by another information content provider. Nothing in the provision described in the prior sentence may be construed to protect a person from liability to the extent that the person developed or created any content in violation of the prohibition on telecommunications harassment.<sup>18</sup>

### **Background – menacing by stalking exemption**

Existing law specifies that 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. 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 any prohibition under the offense.

The provisions described in the preceding paragraph do not 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 any prohibition under the offense of menacing by stalking except as otherwise provided by law, and do not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of any

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<sup>17</sup> R.C. 2917.21(E)(2) and (3).

<sup>18</sup> R.C. 2917.21(E)(4).

prohibition under the offense of menacing by stalking or who knowingly advertises the availability of material of that nature.<sup>19</sup>

## Background – interactive computer service definition

Section 230 of Title 47 of the U.S. Code provides the following definitions of terms that are used in the bill:<sup>20</sup>

"Interactive computer service" means any information service, system, or access software provider (see below) that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet (see below) and such systems operated or services offered by libraries or educational institutions.

"Information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet (see below) or any other interactive computer service.

"Access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following: (1) filter, screen, allow, or disallow content, (2) pick, choose, analyze, or digest content, or (3) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

"Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

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## HISTORY

ACTION	DATE
Introduced	01-11-12
Reported, H. Criminal Justice	05-23-12
Passed House (83-12)	11-14-12
Reported, S. Judiciary	---

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<sup>19</sup> R.C. 2903.211(F).

<sup>20</sup> 47 U.S.C. § 230.

