UPDATED VERSION*

Ohio Legislative Service Commission

Final Analysis

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(As Passed by the General Assembly)

Reps. Stautberg, J. Adams, Becker, Fedor, Hackett, Hayes, McGregor, Letson, Pillich, Winburn, Amstutz, Anielski, Baker, Beck, Bishoff, Blair, Brown, Buchy, Burkley, Butler, Carney, Derickson, Green, Grossman, C. Hagan, Hall, Heard, Johnson, McClain, Milkovich, O'Brien, Patmon, Retherford, Rogers, Romanchuk, Rosenberger, Ruhl, Sears, Sheehy, Slaby, Smith, Sprague, Stinziano, Wachtmann, Young, Batchelder

Sens. Coley, Eklund, Faber, Hite Hughes, Jones, Lehner, Manning, Obhof, Oelslager, Patton, Sawyer, Schiavoni, Seitz, Uecker, Widener

Effective date: September 17, 2014

ACT SUMMARY

- In the prohibition under the offense of "aggravated menacing" that 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, provides that in addition to any other basis for the other person's such belief, the other person's belief may be based on words or conduct of the offender directed at or identifying a corporation, association, or other organization that employs the other person or to which the other person belongs.

- In the general prohibition under the offense of "menacing by stalking" that prohibits any person by engaging in a pattern of conduct from knowingly causing another to believe that the offender will cause physical harm or mental distress to the other person, provides that in addition to any other basis for the other person's such belief, the other person's belief may be based on words or conduct of the offender directed at or identifying a corporation, association, or other organization that employs the other person or to which the other person belongs.

* This version updates the effective date.

- In the prohibition under the offense of "menacing" that prohibits any 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, provides that in addition to any other basis for the other person's such belief, the other person's belief may be based on words or conduct of the offender directed at or identifying a corporation, association, or other organization that employs the other person or to which the other person belongs.

- Permits a corporation, association, or other organization that employs two or more alleged victims of aggravated menacing, menacing by stalking, or menacing or to which two or more alleged victims of any of those offenses belong to file a motion for a temporary protection order on behalf of the corporation, association, or other organization if the offense is based on the offender's words or conduct directed at or identifying the corporation, association, or organization.

- Permits a corporation, association, or other organization that employs two or more alleged victims of menacing by stalking or to which two or more alleged victims of that offense belong to file a petition for a civil protection order on behalf of the corporation, association, or other organization if the offense is based on the offender's words or conduct directed at or identifying the corporation, association, or organization.

- Permits an attorney, on behalf of the corporation, association, or other organization, to file an affidavit to provide sufficient evidentiary support for the issuance of a temporary protection order or a civil protection order described in the two preceding dot points.

- Specifies that, as used in all of the provisions described in the preceding dot points, "organization" includes an entity that is a governmental employer.

CONTENT AND OPERATION

Criminal aggravated menacing prohibitions and penalties

Preexisting law, unchanged by the act except for the expanded circumstance described below, prohibits any 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 the prohibition is the offense of "aggravated menacing." The act expands the scope of this prohibition by providing that in addition to any other basis for the other person's belief 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, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other "organization" that employs the other person or to which the other person belongs. As used in the act's provision, "organization" includes an entity that is a governmental employer.[1]

Under preexisting law, unchanged by the act, aggravated menacing generally is a first degree misdemeanor. 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, aggravated menacing is a fifth degree felony or, if the offender previously has been convicted of or pleaded guilty to 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, aggravate menacing is a fourth degree felony.[2]

Criminal menacing by stalking prohibitions and penalties

Preexisting law

Preexisting law, unchanged by the act except for the expanded circumstance and definitional change described below, sets forth three prohibitions under the offense of "menacing by stalking": a general prohibition under R.C. 2903.211(A)(1), an electronic-related prohibition under R.C. 2903.211(A)(2), and a sex-related prohibition under R.C. 2903.211(A)(3). Preexisting R.C. 2903.211(A)(1) prohibits any person by engaging in a "pattern of conduct" from knowingly causing another person to believe that the offender will cause physical harm to the other person or cause "mental distress" to the other person. Preexisting R.C. 2903.211(A)(2) prohibits any 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 general prohibition described above. Preexisting R.C. 2903.211(A)(3) prohibits any person, with a "sexual motivation," from violating the general prohibition or the electronic-related prohibition described above.[3] (See "**Definitions**," below, for the definitions of "pattern of conduct," "mental distress," and "sexual motivation.")

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[1] R.C. 2903.21(A) to (C).

[2] R.C. 2903.21(B).

[3] R.C. 2903.211(A) and (B).

A violation of any of the above prohibitions is "menacing by stalking," generally a first degree misdemeanor but a fourth or fifth degree felony under any of a list of specified aggravating circumstances (e.g., a prior conviction, a threat of physical harm, a minor victim, a history of violence, possession of a deadly weapon, etc.).[4]

Operation of the act

The act expands the scope of the general prohibition under the offense of "menacing by stalking" described above by providing that in addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's "mental distress," the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association or other "organization" that employs the other person or to which the other person belongs. (See "**Definitions**," below, for the definition of "mental distress.") As used in this provision, "organization" includes an entity that is a governmental employer.[5]

The act does not amend the electronic-related prohibition and the sex-related prohibition described above. However, since a person cannot violate either type of prohibition without violating the general prohibition, the act's expansion of the scope of the general prohibition affect the application of the electronic-related prohibition and the sex-related prohibition.

Preexisting criminal menacing by stalking provisions, other than prohibitions and penalties

Under preexisting law, unchanged by the act, R.C. 2919.271, which permits a court to order an evaluation of the mental condition of a defendant charged with the offense of menacing by stalking, applies in relation to such a defendant.[6]

Under preexisting law, unchanged by the act, R.C. 2903.211 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. 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 the section. The above provisions do not create an affirmative duty for any person providing access or

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[4] R.C. 2903.211(B).

[5] R.C. 2903.211(A)(1) and (D)(10).

[6] R.C. 2903.211(C).

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 the section except as otherwise provided by law. The provisions additionally do not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of the section or who knowingly advertises the availability of material of that nature. [7]

Definitions

The act modifies the definition of "pattern of conduct" as used in the offense of menacing by stalking 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, *or 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, directed at one or more persons employed by or belonging to the same corporation, association, or other organization* (language in italics is added by the act). As under preexisting law, 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."[8]

As used in the offense of menacing by stalking, unchanged by 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.[9] Preexisting law, unchanged by the act, provides that the state does not need to prove in a prosecution for the offense of menacing by stalking that a person requested or received psychiatric treatment,

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[7] R.C. 2903.211(F).

[8] R.C. 2903.211(D)(1).

[9] R.C. 2903.211(D)(2).

psychological treatment, or other mental health services in order to show that the person was caused mental distress.[10]

"**Sexual motivation**" means a purpose to gratify the sexual needs of desires of the offender.[11]

Criminal menacing prohibitions and penalties

Preexisting law, unchanged by the act except for the expanded circumstance described below, prohibits any 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 this prohibition is the offense of "menacing."[12] The act expands the scope of the prohibition under the offense of menacing by providing that, in addition to any other basis for the other person's belief 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, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other "organization" that employs the other person or to which the other person belongs. As used in the act's provision, "organization" includes an entity that is a governmental employer.[13]

Under preexisting law, unchanged by the act, menacing generally is a fourth degree misdemeanor. 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, menacing is a first degree misdemeanor or, if the offender previously has been convicted of or pleaded guilty to 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 fourth degree felony.[14]

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[10] R.C. 2903.211(E).

[11] R.C. 2903.211(D)(9), by reference to R.C. 2971.01, which is not in the act.

[12] R.C. 2903.22(A) and (B).

[13] R.C. 2903.22(A) and (C).

[14] R.C. 2903.22(B).

Protection orders on behalf of corporation, association, or other organization

Temporary protection order as a pretrial condition of release of offender

The act permits a corporation, association, or other organization that employs two or more alleged victims of a violation of any of the prohibitions under the offense of aggravated menacing, menacing by stalking, or menacing or to which two or more alleged victims of a violation of any of those prohibitions belong to file a motion for a temporary protection order pursuant to preexisting R.C. 2903.213 on behalf of the corporation, association, or other organization if the violation is based on words or conduct of the offender that are directed at or identify the corporation, association, or other organization. As used in this provision of the act and its provisions described below, "organization" includes an entity that is a governmental employer.[15]

The motion under preexisting R.C. 2903.213, unchanged by the act, which requests the issuance of a protection order as a pretrial condition of release of the alleged offender, must be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint. If the court issues a protection order as an *ex parte* order, it must conduct, as soon as possible after the issuance of the order but not later than the next day that the court is in session after its issuance, a hearing to determine whether the order should remain in effect, be modified, or be revoked. The person who requested the protection order must appear before the court and provide the court with the information that it requests concerning the basis of the motion. If the court finds that the safety and protection of the complainant or the alleged victim may be impaired by the continued presence of the alleged offender, the court may issue a protection order as a pretrial condition of release that contains terms designed to ensure the safety and protection of the complainant or the alleged victim.[16] R.C. 2903.213 contains several provisions regarding the procedures for and the effects of a protection order issued as a pretrial condition of release.

Civil protection order in menacing by stalking cases

The act permits a corporation, association, or other "organization" (see above) that employs two or more alleged victims of a violation of a prohibition under the offense of menacing by stalking or to which two or more alleged victims of a violation of that prohibition belong to file a petition for a civil protection order pursuant to preexisting R.C. 2903.214 on behalf of the corporation, association, or other organization

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[15] R.C. 2903.215(A) and (B).

[16] R.C. 2903.213(A), (C)(1), and (D)(2), which are not in the act.

if the violation is based on words or conduct of the offender that are directed at or identify the corporation, association, or other organization.[17]

A person may seek relief under preexisting R.C. 2903.214, unchanged by the act, by filing a petition with the court that must contain or state all of the following:[18]

(1) An allegation that the respondent is 18 years of age or older and engaged in a violation of R.C. 2903.211 (menacing by stalking) against the person to be protected by the protection order, including a description of the nature and extent of the violation;

(2) If the petitioner seeks relief in the form of electronic monitoring of the respondent, an allegation that at any time preceding the filing of the petition the respondent engaged in conduct that would cause a reasonable person to believe that the health, welfare, or safety of the person to be protected was at risk, a description of the nature and extent of that conduct, and an allegation that the respondent presents a continuing danger to the person to be protected;

(3) A request for relief under R.C. 2903.214.

If a person who files such a petition requests an *ex parte* order, the court must hold an *ex parte* hearing as soon as possible after the petition is filed, but not later than the next day that the court is in session after the petition is filed. The court, for good cause shown at the *ex parte* hearing, may enter any temporary orders that the court finds necessary for the safety and protection of the person to be protected by the order. Immediate and present danger to the person to be protected by the protection order constitutes good cause for purposes of this provision. Immediate and present danger includes situations in which the respondent has threatened the person to be protected by the protection order with bodily harm or in which the respondent previously has been convicted of or pleaded guilty to a violation of R.C. 2903.211.[19]

If the court, after an *ex parte* hearing, issues a protection order, the court must schedule a full hearing for a date that is within ten court days after the *ex parte* hearing. The court must give the respondent notice of, and an opportunity to be heard at, the full hearing. If a person who files a petition does not request an *ex parte* order, or if a person requests an *ex parte* order but the court does not issue an *ex parte* order after an *ex parte* hearing, the court must proceed as in a normal civil action and grant a full hearing on the matter. After an *ex parte* or full hearing, the court may issue any protection order,

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[17] R.C. 2903.215(C).

[18] R.C. 2903.214(C), which is not in the act.

[19] R.C. 2903.214(D)(1), which is not in the act.

with or without bond, that contains terms designed to ensure the safety and protection of the person to be protected by the protection order.[20] R.C. 2903.214 provides the procedures for and the effects of a civil protection order in menacing by stalking cases.

Other provisions regarding temporary protection order or civil protection order

The act permits an attorney who is licensed to practice law in Ohio, on behalf of the corporation, association, or other "organization," (see above) to file an affidavit to provide sufficient evidentiary support for the issuance of a temporary protection order as a pretrial condition of release of the offender in aggravated menacing, menacing by stalking, or menacing cases or a civil protection order in menacing by stalking cases, as described above.[21]

The act requires that any such temporary protection order or civil protection order issued specify with particularity the location or persons to be protected by the temporary protection order or the protection order.[22]

HISTORY

ACTION	DATE
Introduced	04-16-13
Reported, H. Judiciary	12-11-13
Passed House (92-0)	01-22-14
Reported, S. Criminal Justice	05-27-14
Passed Senate (32-1)	06-03-14
House concurred in Senate amendments (96-0)	06-04-14

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[20] R.C. 2903.214(D)(2)(a), (3), and (E)(1)(a), which is not in the act.

[21] R.C. 2903.15(D).

[22] R.C. 2903.15(E).