



Ohio Legislative Service Commission

Bill Analysis

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H.B. 151*

131st General Assembly
(As Reported by H. Judiciary)

Reps. Anielski, Grossman, LaTourette, Kraus, Dever, Blessing, Rogers, Brown

BILL SUMMARY

Menacing by stalking

- Expands the offense of "menacing by stalking" by additionally prohibiting all of the following:

(1) 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 family or household member of the other person;

(2) A person through the use of any form of written communication from posting a message or using any intentionally written or verbal graphic gesture to violate or to urge or incite another person to violate the previously described prohibition;

(3) A person through the use of a telecommunications device, from posting a message or using any intentionally written or verbal graphic gesture with either of the purposes described above in (2).

Telecommunications harassment

- Modifies the offense of "telecommunications harassment" to apply to communications made for the purpose of intimidation.
- Removes from the prohibition the existing requirement that the caller failed to identify the caller to the recipient of the telecommunication.

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

- Prohibits any person from knowingly making, or causing to be made, or 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:

(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, or harass the recipient.

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

(3) Without a lawful 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 the recipient of the telecommunication or any family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the person.

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

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

- Prohibits a person from knowingly posting a text or audio statement or an image on an Internet website or webpage for the purpose of abusing, threatening, or harassing another person.
- Provides that the new telecommunications harassment prohibitions and an existing prohibition regarding calls made to a person or premises when the recipient previously told the caller not to make those calls, do not apply to a person employed or contracted by a specified type of news medium while gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.
- 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 such a service

will receive the same protection against causes of action and the same immunity as a provider of a telecommunications service or information service, or any officer, employee, or agent of that 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 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 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 block the receipt or transmission of any information that it believes is, or will be sent, in violation of 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 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.

Assault; Theft

- Increases the penalty for the offense of "assault" to a fourth degree felony when the victim is a volunteer firefighter.
- Corrects a cross-reference in the theft statute to special *purchase* articles.

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CONTENT AND OPERATION

Menacing by stalking

Expansion of current offense

The bill expands the offense of menacing by stalking in several ways.

The bill expands an existing prohibition under the offense of menacing by stalking 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 a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm or mental distress to the other person's family or household member, the belief or mental distress may be based on the offender's words or conduct that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.¹ The current provision prohibits engaging in a pattern of conduct that will cause another person to believe that the offender will cause physical harm or mental distress to the other person.

The bill also expands another prohibition under the offense of menacing by stalking to prohibit a person, through the use of any form of written communication, including by the use of a telecommunications device from using any intentionally written or verbal graphic gesture with purpose to either commit a violation, or to urge or incite another to commit a violation, of the prohibition described in the preceding paragraph.² Current law prohibits a person from using any electronic method of

¹ R.C. 2903.211(A)(1).

² R.C. 2903.211(A)(2).



remotely transmitting information, including a computer or network, from posting a message urging or inciting another to commit such a violation.

Existing law, prohibits violating either prohibition described above with a sexual motivation.³

Exemptions and penalties

The existing exemptions from the prohibitions described below and the existing penalties apply with respect to the expanded prohibitions under the bill.

Continuing law generally 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 incidental to providing such access or connection, 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 such access or connection 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, and does not have an affirmative duty to block such receipt or transmission.⁴

Menacing by stalking generally is a first degree misdemeanor. If any of nine specified conditions are present, including a prior conviction of menacing by stalking 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.⁵

Definitions

The bill defines the following terms used in the provisions described above:⁶

"Family or household member" means either of the following:

³ R.C. 2903.211(A)(3).

⁴ R.C. 2903.211(F).

⁵ R.C. 2903.211(B).

⁶ R.C. 2903.211(D) (11) and (12).



(1) Any of the following who is residing or has resided with the victim of menacing by stalking:

(a) A spouse, a person living as a spouse, or a former spouse of the victim;

(b) A parent, a foster parent, or a child of the victim, or another person related by consanguinity or affinity to the victim;

(c) A parent or a child of a spouse, person living as a spouse, or former spouse of the victim, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the victim.

(2) The natural parent of any child of whom the victim is the natural or putative other natural parent.

"Person living as a spouse" means a person who is living or has lived with the victim of menacing by stalking in a common law marital relationship, who otherwise is cohabiting with the victim, or who otherwise has cohabited with the victim within five years prior to the date of the alleged commission of the offense.

"Pattern of conduct" has the same meaning as under the existing provision, except that it also includes the use of intentionally written or verbal graphic gestures and the use of any form of written communication.

Telecommunications harassment

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

The bill modifies an existing prohibition under the offense of telecommunications harassment to also prohibit telecommunications made with the purpose to intimidate. Continuing law prohibits any person from knowingly making, causing to be made, or permitting a telecommunication to be made from a telecommunications device under the person's control, to another if the caller makes the telecommunication with purpose to harass, or abuse any person at the premises to which the telecommunication is made, whether or not actual communication takes place between the caller and a recipient. The bill also eliminates as an element of the crime a current requirement that the caller fails to identify the caller to the recipient.⁷

The bill adds six additional prohibited actions to the offense of telecommunications harassment. The bill prohibits any person from knowingly making,

⁷ R.C. 2917.21(A)(1).

causing to be made, or 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:⁸

(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, or harass the recipient.

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

(3) Without a lawful 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 the recipient of the telecommunication or any family or household member of the recipient with purpose to abuse, threaten, intimidate, or harass the recipient.

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

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

Additionally, the bill adds a new prohibition that prohibits a person from knowingly posting a text or audio statement or an image on an Internet website or webpage for the purpose of abusing, threatening, or harassing another person.⁹

For purposes of (4), above, the bill uses essentially the same definitions of "family or household member" and "person living as a spouse" as it does for menacing by stalking.¹⁰

The bill retains the existing penalty for a violation of the existing prohibition described above, as modified by the bill (a first degree misdemeanor on a first offense

⁸ R.C. 2917.21(A)(6) to (11).

⁹ R.C. 2917.21(B)(2).

¹⁰ R.C. 2917.21(G)(5) and (6).

and a fifth degree felony on each subsequent offense) and applies that penalty to a violation of the new prohibition it enacts.¹¹

Journalist exemption

The bill provides a journalist exemption from: (1) the additional prohibitions added by the bill, and (2) the existing prohibition against knowingly making, causing to be made, or permitting a telecommunication to be made from a telecommunications device under the person's control, to another, if the caller 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. Under the exemption, those prohibitions do not apply to a person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, cable channel or cable operator, or radio or television station, is gathering, processing, transmitting, compiling, editing, or disseminating information for the general public within the scope of the person's employment in that capacity or the person's contractual authority in that capacity. For purposes of this exemption, the bill uses an existing Video Service Law definition of "cable operator."¹²

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

Under the bill, no cause of action may be asserted in any court in Ohio against any provider of an "interactive computer service," or against any officer, employee, or agent of an interactive computer 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 an interactive computer service, or an officer, employee, or agent of an interactive computer 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 prosecution of an alleged violation of any prohibition under telecommunications harassment. These are the same protections against causes of action and the same civil and criminal immunity that are afforded under existing law to any provider of a telecommunications service or

¹¹ R.C. 2917.21(C)(2).

¹² R.C. 2917.21(F), and R.C. 2917.21(G)(7), by reference to R.C. 1332.21, which is not in the bill.



information service or any officer, employee, or agent of a telecommunications service or information service.¹³

Interactive computer service definition

The bill defines "interactive computer service" as in section 230 of Title 47 of the U. S. Code which provides the following definitions of terms:¹⁴

"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 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.

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 such access or connection, 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 such access or connection will not be liable for any action voluntarily taken in good faith to block the receipt or

¹³ R.C. 2917.21(D).

¹⁴ 47 U.S.C. § 230.



transmission through its service of any information that the person believes is, or will be sent, in violation of any prohibition under the offense.¹⁵

Additionally, the bill specifies that the above provisions 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.¹⁶

Under the bill, 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" (see definitions above), nor held civilly or criminally liable for the creation or development of information provided by another information content provider. Nothing in the above provision 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.¹⁷

Penalty for assault of a volunteer firefighter

The bill provides that the offense of "assault" is a fourth degree felony if the victim of the offense is a volunteer firefighter who the offender knew or should have known was either a firefighter or a volunteer firefighter while in the performance of the victim's official duties.¹⁸ As used in this provision, "volunteer firefighter" means both of the following:¹⁹ (1) a duly appointed member of a fire department on either a nonpay or part-pay basis who is ineligible to be a member of the Ohio Police and Fire Pension Fund, or whose employment as a firefighter does not in itself qualify any such person for membership in the Public Employees Retirement System, or who has waived membership in the Public Employees Retirement System, or (2) firefighters drafted, requisitioned, or appointed to serve in an emergency.

¹⁵ R.C. 2917.21(E)(1).

¹⁶ R.C. 2917.21(E)(2) and (3).

¹⁷ R.C. 2917.21(E)(4).

¹⁸ R.C. 2903.13(C)(5)(b).

¹⁹ R.C. 2903.13(D)(21), by reference to R.C. 146.01, which is not in the bill.



Under continuing law, a person commits assault if the person knowingly causes or attempts to cause physical harm to another or to another's unborn or recklessly causes serious physical harm to another or to another's unborn. Assault generally is a first degree misdemeanor, but it is a fourth degree felony if it is committed against a "firefighter" (see below) or a person performing "emergency medical service" (see below), while in the performance of the victim's official duties, and in a number of other specified circumstances it is a third, fourth, or fifth degree felony.²⁰ As used in these provisions, "firefighter" means any regular, paid, member of a lawfully constituted fire department of a municipal corporation or township, and "emergency medical service" means any of the services described in certain provisions of the Emergency Medical Services Law that are performed by "first responders," "emergency medical technicians-basic," "emergency medical technicians-intermediate," and "paramedics" (all defined terms).²¹

Theft of special purchase article

The bill corrects a cross-reference in the theft statute to "special purchase articles."

Current law specifies that if the property stolen in a violation of the prohibition under the theft statute (see below) is a "special purpose article, as defined in R.C. 4737.04," and the value of the property is less than \$7,500 or less than \$1,000 when the victim of the violation is an elderly person, disabled adult, active duty service member, or spouse of an active duty service member, the violation is the offense of "theft of a special purpose article or articles," a fifth degree felony.²² R.C. 4737.04 does not define the term "special *purpose* article" – rather, it defines the term "special *purchase* article." The bill corrects the reference so that the provision states that if the property stolen in a violation of the prohibition under the theft statute is a "special purchase article, as defined in R.C. 4737.04" (see below), and the value of the property is less than the specified amount in the specified circumstances, the violation is the offense of "theft of a special purpose article or articles," a fifth degree felony.²³ Under R.C. 4737.04, for purposes of laws pertaining to scrap metal dealers, "special purchase article" includes various metal items, such as beer kegs, cable, wire, electrical components, and other

²⁰ R.C. 2903.13.

²¹ R.C. 2903.13(D), by reference to R.C. 3937.41 and 4765.01, which are not in the bill.

²² R.C. 2913.02(B)(9).

equipment used in providing cable service or any utility service, grave markers, guard rails, and street signs.²⁴

The prohibition under the theft statute prohibits a person, with purpose to deprive the owner of property or services, from knowingly obtaining or exerting control over either the property or services without the consent of the owner or person authorized to give consent, beyond the scope of the express or implied consent of the owner or person authorized to give consent, by deception, by threat, or by intimidation.²⁵

HISTORY

ACTION

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²⁴ R.C. 4734.04, which is not in the bill.

²⁵ R.C. 2913.02(A).

