

# AN ACT

To amend sections 2137.15, 2905.11, 2929.12, and 2933.51 and to enact sections 2905.111 and 2933.523 of the Revised Code to enact Braden's Law to prohibit sexual extortion and to require service providers to comply with search warrants and interception warrants for electronic information.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 2137.15, 2905.11, 2929.12, and 2933.51 be amended and sections 2905.111 and 2933.523 of the Revised Code be enacted to read as follows:

Sec. 2137.15. (A) Not later than sixty days after receipt of the information required under sections 2137.06 to 2137.13 of the Revised Code, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. If the deceased user was less than eighteen years of age at the time of death and the request under this chapter was initiated by a parent or legal custodian or guardian at the time of the deceased user's death, or the fiduciary of the estate of that deceased user, the court shall determine and adjudicate the application for a court order within thirty days after submission.

(B) An order under division (A) of this section directing compliance shall contain a finding that compliance is not in violation of 18 U.S.C. 2702, as amended.

(C) A custodian may notify the user that a request for disclosure or to terminate an account was made under this chapter.

(D) A custodian may deny a request under this chapter from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(E) Nothing in this chapter limits a custodian's ability to obtain, or to require a guardian, agent, or designated recipient requesting disclosure or termination under this chapter to obtain, a court order that does all of the following:

- (1) Specifies that an account belongs to the ward or principal;
- (2) Specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and
- (3) Contains a finding required by law other than this chapter.

(F) ~~A~~ If a court finds that a custodian failed to comply with a court order issued under division (A) of this section, the court shall impose a civil penalty on the custodian as follows:

- (1) Up to one thousand dollars for each of the first sixty days the operator failed to comply.

with the order:

(2) In addition to the civil penalty required by division (F)(1) of this section, up to five thousand dollars for each subsequent day the operator failed to comply with the order, commencing with the sixty-first day and ending with the ninetieth day:

(3) In addition to the civil penalties required by divisions (F)(1) and (2) of this section, up to ten thousand dollars for each subsequent day the operator failed to comply with the order, commencing with the ninety-first day.

(G) Any civil penalty that is imposed under division (F) of this section shall be deposited into the consumer protection enforcement fund created under section 1345.51 of the Revised Code.

(H) Except as otherwise provided under division (F) of this section, a custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Sec. 2905.11. (A) As used in this section and section 2905.111 of the Revised Code:

(1) "Elderly person" and "disabled adult" have the same meanings as in section 2913.01 of the Revised Code.

(2) "Information service" and "telecommunications service" have the same meanings as in the "Telecommunications Act of 1996," 47 U.S.C. 153, as amended.

(3) "Interactive computer service" has the same meaning as in the "Telecommunications Act of 1996," 47 U.S.C. 230, as amended.

(4) "Nudity," "sexual activity," and "sexual excitement" have the same meanings as in section 2907.01 of the Revised Code.

(5) "Private images" means images of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination.

(6) "Threat" includes a direct threat and a threat by innuendo.

(B) No person, with purpose to obtain any valuable thing or valuable benefit or to induce another to do an unlawful act, shall do any of the following:

(1) Threaten to commit any felony;

(2) Threaten to commit any offense of violence;

(3) Violate section 2903.21 or 2903.22 of the Revised Code;

(4) Utter or threaten any calumny against any person;

(5) Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business repute, or to impair any person's credit.

~~(B)~~(C) Whoever violates division (B) of this section is guilty of extortion, a felony of the third degree.

~~(C) As used in this section, "threat" includes a direct threat and a threat by innuendo.~~(D) No person, with purpose to do any of the following, shall threaten to release, exhibit, or distribute the

private images of another:

(1) Compel or attempt to compel the other person, against the other person's will, to perform any act or refrain from performing any act;

(2) Induce the other person to commit an offense;

(3) Obtain additional private images from the other person;

(4) Obtain anything of value from the other person.

(E) Whoever violates division (D) of this section is guilty of sexual extortion. The penalty for the offense shall be determined as follows:

(1) Except as otherwise provided in division (E)(2) or (3) of this section, sexual extortion is a felony of the third degree.

(2) Except as otherwise provided in division (E)(3) of this section, if the offender previously has been convicted of or pleaded guilty to a violation of division (D) of this section or if the offense involves sexual extortion of a person under the age of eighteen, an elderly person, or a disabled adult, sexual extortion is a felony of the second degree.

(3) If the offender has previously been convicted of or pleaded guilty to two or more violations of division (D) of this section or if the offender has previously been convicted of or pleaded guilty to an offense involving sexual extortion of a person under the age of eighteen, an elderly person, or a disabled adult and the offender knows or has reason to know that the person is under the age of eighteen, an elderly person, or a disabled adult, sexual extortion is a felony of the first degree.

(F) A prosecution for a violation of division (D) of this section does not preclude a prosecution of a violation of division (B) of this section. One or more acts, a series of acts, or a course of behavior that can be prosecuted under division (D) of this section or division (B) of this section may be prosecuted under division (D) of this section, division (B) of this section, or both divisions. However, if an offender is convicted of or pleads guilty to a violation of division (D) of this section and also is convicted of or pleads guilty to a violation of division (B) of this section based on the same conduct involving the same victim that was the basis of the violation of division (D) of this section, the two offenses are allied offenses of similar import under section 2941.25 of the Revised Code.

(G)(1) No person shall assert a cause of action in any court of this state against any provider of an information service, an interactive computer service, or a telecommunications service, or against any agent, employee, or officer of such provider, 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 division (D) of this section.

(2) A provider of an information service, an interactive computer service, or a telecommunications service, or any agent, employee, or officer of such provider, 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 division (D) of this section.

(H)(1)(a) A person shall not be considered to have violated division (D) of this section solely for providing 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.

(b) Any person providing access or connection to or from an electronic method of remotely transferring information not under that person's control shall 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 division (D) of this section.

(2) Division (H)(1) of this section does 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 division (D) of this section, except as otherwise provided by law.

(3) Division (H)(1) of this section does not apply to a person who conspires with another person actively involved in the creation or knowing distribution of material in violation of division (D) of this section, or who knowingly advertises the availability of material of that nature.

(4)(a) A provider or user of an interactive computer service shall neither be treated as the publisher nor speaker of any information provided by another information content provider, nor shall such a person be held civilly or criminally liable for the creation or development of information provided by another information content provider.

(b) Nothing in division (H)(4)(a) of this section shall be construed as protecting a person from liability to the extent that the person developed or created any content in violation of division (D) of this section.

Sec. 2905.111. Notwithstanding any provision of the Revised Code to the contrary, no person shall be convicted of an offense, and no child shall be adjudicated a delinquent child, for disseminating private images of that person or child to another person as a direct and proximate result of a violation of division (D) of section 2905.11 of the Revised Code in which the person or child was a victim.

Sec. 2929.12. (A) Unless otherwise required by section 2929.13 or 2929.14 of the Revised Code, a court that imposes a sentence under this chapter upon an offender for a felony has discretion to determine the most effective way to comply with the purposes and principles of sentencing set forth in section 2929.11 of the Revised Code. In exercising that discretion, the court shall consider the factors set forth in divisions (B) and (C) of this section relating to the seriousness of the conduct,

the factors provided in divisions (D) and (E) of this section relating to the likelihood of the offender's recidivism, and the factors set forth in division (F) of this section pertaining to the offender's service in the armed forces of the United States and, in addition, may consider any other factors that are relevant to achieving those purposes and principles of sentencing.

(B) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is more serious than conduct normally constituting the offense:

(1) The physical or mental injury suffered by the victim of the offense due to the conduct of the offender was exacerbated because of the physical or mental condition or age of the victim.

(2) The victim of the offense suffered serious physical, psychological, or economic harm, including serious physical harm the victim caused to the victim's self, as a result of the offense.

(3) The victim died by suicide as a result of the offense.

(4) The offender held a public office or position of trust in the community, and the offense related to that office or position.

~~(4)~~(5) The offender's occupation, elected office, or profession obliged the offender to prevent the offense or bring others committing it to justice.

~~(5)~~(6) The offender's professional reputation or occupation, elected office, or profession was used to facilitate the offense or is likely to influence the future conduct of others.

~~(6)~~(7) The offender's relationship with the victim facilitated the offense.

~~(7)~~(8) The offender committed the offense for hire or as a part of an organized criminal activity.

~~(8)~~(9) In committing the offense, the offender was motivated by prejudice based on race, ethnic background, gender, sexual orientation, or religion.

~~(9)~~(10) If the offense is a violation of section 2919.25 or a violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code involving a person who was a family or household member at the time of the violation, the offender committed the offense in the vicinity of one or more children who are not victims of the offense, and the offender or the victim of the offense is a parent, guardian, custodian, or person in loco parentis of one or more of those children.

(C) The sentencing court shall consider all of the following that apply regarding the offender, the offense, or the victim, and any other relevant factors, as indicating that the offender's conduct is less serious than conduct normally constituting the offense:

(1) The victim induced or facilitated the offense.

(2) In committing the offense, the offender acted under strong provocation.

(3) In committing the offense, the offender did not cause or expect to cause physical harm to any person or property.

(4) There are substantial grounds to mitigate the offender's conduct, although the grounds are not enough to constitute a defense.

(D) The sentencing court shall consider all of the following that apply regarding the

offender, and any other relevant factors, as factors indicating that the offender is likely to commit future crimes:

(1) At the time of committing the offense, the offender was under release from confinement before trial or sentencing; was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code; was under post-release control pursuant to section 2967.28 or any other provision of the Revised Code for an earlier offense or had been unfavorably terminated from post-release control for a prior offense pursuant to division (B) of section 2967.16 or section 2929.141 of the Revised Code; was under transitional control in connection with a prior offense; or had absconded from the offender's approved community placement resulting in the offender's removal from the transitional control program under section 2967.26 of the Revised Code.

(2) The offender previously was adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has a history of criminal convictions.

(3) The offender has not been rehabilitated to a satisfactory degree after previously being adjudicated a delinquent child pursuant to Chapter 2151. of the Revised Code prior to January 1, 2002, or pursuant to Chapter 2152. of the Revised Code, or the offender has not responded favorably to sanctions previously imposed for criminal convictions.

(4) The offender has demonstrated a pattern of drug or alcohol abuse that is related to the offense, and the offender refuses to acknowledge that the offender has demonstrated that pattern, or the offender refuses treatment for the drug or alcohol abuse.

(5) The offender shows no genuine remorse for the offense.

(E) The sentencing court shall consider all of the following that apply regarding the offender, and any other relevant factors, as factors indicating that the offender is not likely to commit future crimes:

(1) Prior to committing the offense, the offender had not been adjudicated a delinquent child.

(2) Prior to committing the offense, the offender had not been convicted of or pleaded guilty to a criminal offense.

(3) Prior to committing the offense, the offender had led a law-abiding life for a significant number of years.

(4) The offense was committed under circumstances not likely to recur.

(5) The offender shows genuine remorse for the offense.

(F) The sentencing court shall consider the offender's military service record and whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses.

Sec. 2933.51. As used in sections 2933.51 to 2933.66 of the Revised Code:

(A) "Wire communication" means an aural transfer that is made in whole or in part through the use of facilities for the transmission of communications by the aid of wires or similar methods of

connecting the point of origin of the communication and the point of reception of the communication, including the use of a method of connecting the point of origin and the point of reception of the communication in a switching station, if the facilities are furnished or operated by a person engaged in providing or operating the facilities for the transmission of communications. "Wire communication" includes an electronic storage of a wire communication.

(B) "Oral communication" means an oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying that expectation. "Oral communication" does not include an electronic communication.

(C) "Intercept" means the aural or other acquisition of the contents of any wire, oral, or electronic communication through the use of an interception device.

(D) "Interception device" means an electronic, mechanical, or other device or apparatus that can be used to intercept a wire, oral, or electronic communication. "Interception device" does not mean any of the following:

(1) A telephone or telegraph instrument, equipment, or facility, or any of its components, if the instrument, equipment, facility, or component is any of the following:

(a) Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business;

(b) Furnished by a subscriber or user for connection to the facilities of a provider of wire or electronic communication service and used in the ordinary course of that subscriber's or user's business;

(c) Being used by a provider of wire or electronic communication service in the ordinary course of its business or by an investigative or law enforcement officer in the ordinary course of the officer's duties that do not involve the interception of wire, oral, or electronic communications.

(2) A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(E) "Investigative officer" means any of the following:

(1) An officer of this state or a political subdivision of this state, who is empowered by law to conduct investigations or to make arrests for a designated offense;

(2) A person described in divisions (A)(11)(a) and (b) of section 2901.01 of the Revised Code;

(3) An attorney authorized by law to prosecute or participate in the prosecution of a designated offense;

(4) A secret service officer appointed pursuant to section 309.07 of the Revised Code;

(5) An officer of the United States, a state, or a political subdivision of a state who is authorized to conduct investigations pursuant to the "Electronic Communications Privacy Act of 1986," 100 Stat. 1848-1857, 18 U.S.C. 2510-2521 (1986), as amended.

(F) "Interception warrant" means a court order that authorizes the interception of wire, oral,

or electronic communications and that is issued pursuant to sections 2933.53 to 2933.56 of the Revised Code.

(G) "Contents," when used with respect to a wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of the communication.

(H) "Communications common carrier" means a person who is engaged as a common carrier for hire in intrastate, interstate, or foreign communications by wire, radio, or radio transmission of energy. "Communications common carrier" does not include, to the extent that the person is engaged in radio broadcasting, a person engaged in radio broadcasting.

(I) "Designated offense" means any of the following:

(1) A felony violation of section 1315.53, 1315.55, 2903.01, 2903.02, 2903.11, 2905.01, 2905.02, 2905.11, 2905.22, 2905.32, 2907.02, 2907.21, 2907.22, 2909.02, 2909.03, 2909.04, 2909.22, 2909.23, 2909.24, 2909.26, 2909.27, 2909.28, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2913.02, 2913.04, 2913.42, 2913.51, 2915.02, 2915.03, 2917.01, 2917.02, 2921.02, 2921.03, 2921.04, 2921.32, 2921.34, 2923.20, 2923.32, 2925.03, 2925.04, 2925.05, or 2925.06 or of division (B) of section 2915.05 or of division (E) or (G) of section 3772.99 of the Revised Code;

(2) A violation of section 2919.23 of the Revised Code that, had it occurred prior to July 1, 1996, would have been a violation of section 2905.04 of the Revised Code as it existed prior to that date;

(3) A felony violation of section 2925.11 of the Revised Code that is not a minor drug possession offense, as defined in section 2925.01 of the Revised Code;

(4) Complicity in the commission of a felony violation of a section listed in division (I)(1), (2), or (3) of this section;

(5) An attempt to commit, or conspiracy in the commission of, a felony violation of a section listed in division (I)(1), (2), or (3) of this section, if the attempt or conspiracy is punishable by a term of imprisonment of more than one year.

(J) "Aggrieved person" means a person who was a party to an intercepted wire, oral, or electronic communication or a person against whom the interception of the communication was directed.

(K) "Person" means a person, as defined in section 1.59 of the Revised Code, or a governmental officer, employee, or entity.

(L) "Special need" means a showing that a licensed physician, licensed practicing psychologist, attorney, practicing cleric, journalist, or either spouse is personally engaging in continuing criminal activity, was engaged in continuing criminal activity over a period of time, or is committing, has committed, or is about to commit, a designated offense, or a showing that specified public facilities are being regularly used by someone who is personally engaging in continuing criminal activity, was engaged in continuing criminal activity over a period of time, or is committing, has committed, or is about to commit, a designated offense.

(M) "Journalist" means a person engaged in, connected with, or employed by, any news



media, including a newspaper, magazine, press association, news agency, or wire service, a radio or television station, or a similar media, for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating news for the general public.

(N) "Electronic communication" means a transfer of a sign, signal, writing, image, sound, datum, or intelligence of any nature that is transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system. "Electronic communication" does not mean any of the following:

- (1) A wire or oral communication;
- (2) A communication made through a tone-only paging device;
- (3) A communication from an electronic or mechanical tracking device that permits the tracking of the movement of a person or object.

(O) "User" means a person or entity that uses an electronic communication service and is duly authorized by the provider of the service to engage in the use of the electronic communication service.

(P) "Electronic communications system" means a wire, radio, electromagnetic, photoelectronic, or photo-optical facility for the transmission of electronic communications, and a computer facility or related electronic equipment for the electronic storage of electronic communications.

(Q) "Electronic communication service" means a service that provides to users of the service the ability to send or receive wire or electronic communications.

(R) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is none of the following:

- (1) Scrambled or encrypted;
- (2) Transmitted using a modulation technique, the essential parameters of which have been withheld from the public with the intention of preserving the privacy of the communication;
- (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) Transmitted over a communications system provided by a communications common carrier, unless the communication is a tone-only paging system communication;
- (5) Transmitted on a frequency allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, as those provisions existed on July 1, 1996, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

(S) "Electronic storage" means a temporary, intermediate storage of a wire or electronic communication that is incidental to the electronic transmission of the communication, and a storage of a wire or electronic communication by an electronic communication service for the purpose of backup protection of the communication.

(T) "Aural transfer" means a transfer containing the human voice at a point between and

including the point of origin and the point of reception.

(U) "Pen register" means a device that records or decodes electronic impulses that identify the numbers dialed, pulsed, or otherwise transmitted on telephone lines to which the device is attached.

(V) "Trap and trace device" means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire communication or electronic communication was transmitted but that does not intercept the contents of the wire communication or electronic communication.

(W) "Judge of a court of common pleas" means a judge of that court who is elected or appointed as a judge of general jurisdiction or as a judge who exercises both general jurisdiction and probate, domestic relations, or juvenile jurisdiction. "Judge of a court of common pleas" does not mean a judge of that court who is elected or appointed specifically as a probate, domestic relations, or juvenile judge.

(X) "Electronic user data" means any data or records that are stored, collected, used, or safeguarded by a service or program that stores electronic data. This includes data stored on a computer, computer network, or computer system.

(Y) "Remote computing service" means the provision of computer storage or processing services to the public through an electronic communication service.

Sec. 2933.523. (A) A provider of an electronic communication service or a provider of remote computing service operating in the state shall comply with any court-issued search warrant or interception warrant issued for wire communications, electronic communications, an electronic communications system, or other electronic storage or data storage, regardless of whether user data is held at a location within the state or at a location in another state.

(B) A court may issue an order under this section on a service provider that is a corporation or entity that is incorporated or organized in this state, or a company or business entity doing business in this state under a contract or terms of a service agreement with a state resident. The service provider shall produce all information sought, as required by the court order.

SECTION 2. That existing sections 2137.15, 2905.11, 2929.12, and 2933.51 of the Revised Code are hereby repealed.

SECTION 3. Sections 2137.15, 2905.11, and 2905.111 of the Revised Code as amended or enacted by this act shall be known as Braden's Law.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor:*

Sub. H. B. No. 531

135th G.A.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_