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135th General Assembly

Regular Session

2023-2024

Sub. H. B. No. 91

A BILL

To amend section 2903.211 of the Revised Code to
generally prohibit a person from knowingly
installing or using a tracking device or
application on another person or another
person's property without the other person's
consent.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2903.211 of the Revised Code be
amended to read as follows:

Sec. 2903.211. (A) (1) No person by engaging in a pattern
of conduct shall knowingly cause another person to believe that
the offender will cause physical harm to the other person or a
family or household member of the other person or cause mental
distress to the other person or 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 to
the other person or the other person's family or household
member or mental distress to the other person or the other
person's family or household member, the other person's belief

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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.

(2) No 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
telecommunication device shall post a message or use any
intentionally written or verbal graphic gesture with purpose to
do either of the following:

(a) Violate division (A) (1) of this section;

(b) Urge or incite another to commit a violation of
division (A) (1) of this section.

(3) No person, with a sexual motivation, shall violate
division (A) (1) or (2) of this section.

(B)—(B) (1) Except as otherwise provided in division (B) (3)
of this section, no person shall knowingly do any of the
following without the other person's consent:

(a) Install a tracking device or tracking application on
another person or another person's property;
(b) Use a tracking device or tracking application to
remotely determine or track the position or movement of another
person or another person's property.

(2) For purposes of division (B) (1) of this section, if a
person has given consent for another to install or use a
tracking device or tracking application on the consenting
person's person or the person's property, the consenting

person's consent is presumed to be revoked if either of the
following applies:

(a) The consenting person and the person to whom consent
was given are lawfully married and one of them files a complaint
for divorce or a petition for dissolution of marriage from the
other. Not later than five days after being served with a
complaint for divorce or a petition for dissolution of marriage,
the person to whom consent was given shall lawfully uninstall or
discontinue use of the tracking device or application. If the
person to whom consent was given cannot lawfully uninstall or
discontinue use of the tracking device or tracking application,
the person to whom consent was given shall notify the court in
which the complaint for divorce or the petition for dissolution
of marriage was filed in writing that the person to whom consent
was given has installed or is using a tracking device or
tracking application on the previously consenting person's
person or the person's property and cannot uninstall or
discontinue its use without violating a court order.

(b) The consenting person or the person to whom consent
was given files a petition or motion under section 2151.34,
2903.213, 2903.214, 2919.26, or 3113.31 of the Revised Code
requesting the issuance against the other person of a protection
order or temporary protection order. Not later than seventy-two
hours after being served with the ex parte protection order,
protection order, or temporary protection order, the person to
whom consent was given shall lawfully uninstall or discontinue
use of the tracking device or application. If the person to whom
consent was given cannot lawfully uninstall or discontinue use
of the tracking device or tracking application, the person to
whom consent was given shall notify the court that issued the ex
parte protection order, protection order, or temporary

protection order in writing that the person to whom consent was 78
given has installed or is using a tracking device or tracking 79
application on the previously consenting person's person or the 80
person's property and cannot uninstall or discontinue its use 81
without violating the protection order. 82

(3) Division (B)(1) of this section does not apply to any 83
of the following: 84

(a) A law enforcement officer, or any law enforcement 85
agency, that lawfully installs or uses a tracking device or 86
tracking application on another person or another person's 87
property as part of a criminal investigation; 88

(b) A parent or legal guardian of a child who installs or 89
uses a tracking device or tracking application to remotely 90
determine or track the position or movement of the parent's or 91
legal guardian's child, if any of the following applies: 92

(i) The parents or legal guardians of the child are 93
lawfully married to each other and are not separated or 94
otherwise living apart, and either of those parents or legal 95
guardians consents to the installation or use of the tracking 96
device or tracking application. 97

(ii) The parent or legal guardian of the child is the sole 98
surviving parent or legal guardian of the child. 99

(iii) The parent or legal guardian of the child has sole 100
custody of the child. 101

(iv) The parents or legal guardians of the child are 102
divorced, separated, or otherwise living apart, both are subject 103
to a shared parenting decree or order, and both consent to the 104
installation or use of the tracking device or tracking 105
application. 106

<u>(c) A caregiver of an elderly person or disabled adult, if</u>	107
<u>the elderly person's or disabled adult's treating physician</u>	108
<u>certifies that the installation or use of a tracking device or</u>	109
<u>tracking application on the elderly person or disabled adult or</u>	110
<u>onto the elderly person's or disabled adult's property is</u>	111
<u>necessary to ensure the safety of the elderly person or disabled</u>	112
<u>adult;</u>	113
<u>(d) A person acting in good faith on behalf of a business</u>	114
<u>entity for a legitimate business purpose;</u>	115
<u>(e) An owner or lessee of a motor vehicle who installs or</u>	116
<u>uses, or directs the installation or use of, a tracking device</u>	117
<u>or tracking application on the vehicle during the period of</u>	118
<u>ownership or lease, if any of the following applies:</u>	119
<u>(i) The tracking device or tracking application is removed</u>	120
<u>before the vehicle's title is transferred or the vehicle's lease</u>	121
<u>expires.</u>	122
<u>(ii) The new owner of the vehicle, in the case of a sale,</u>	123
<u>or the lessor of the vehicle, in the case of an expired lease,</u>	124
<u>consents in writing to the non-removal of the tracking device or</u>	125
<u>tracking application.</u>	126
<u>(iii) The owner of the vehicle at the time of the</u>	127
<u>installation or use of the tracking device or tracking</u>	128
<u>application was the original manufacturer of the vehicle.</u>	129
<u>(f) A surety bail bond agent, or any employee or</u>	130
<u>contractor of a surety bail bond agent, that lawfully installs</u>	131
<u>or uses a tracking device or tracking application on another</u>	132
<u>person or another person's property as part of the surety bail</u>	133
<u>bond agent's, employee's, or contractor's official</u>	134
<u>responsibilities or duties;</u>	135

<u>(g) (i) Except as otherwise provided in divisions (B) (3) (g)</u>	136
<u>(ii) and (iii) of this section, a class A, B, or C licensee, or</u>	137
<u>any employee of a class A, B, or C licensee, who lawfully</u>	138
<u>installs or uses a tracking device or tracking application on</u>	139
<u>another person or another person's property as part of the class</u>	140
<u>A, B, or C licensee's or employee's official responsibilities or</u>	141
<u>duties;</u>	142
<u>(ii) A class A, B, or C licensee, or any employee of a</u>	143
<u>class A, B, or C licensee, shall not install or use a tracking</u>	144
<u>device or tracking application on another person or another</u>	145
<u>person's property as a part of the class A, B, or C licensee's</u>	146
<u>or employee's official responsibilities or duties, if the class</u>	147
<u>A, B, or C licensee or employee is hired by a district board of</u>	148
<u>education or governing authority of a school and the purpose for</u>	149
<u>which the class A, B, or C licensee or employee is hired is to</u>	150
<u>determine a student's position, movement, or address;</u>	151
<u>(iii) A class A, B, or C licensee, or any employee of a</u>	152
<u>class A, B, or C licensee, shall not install or use a tracking</u>	153
<u>device or tracking application on another person's motor vehicle</u>	154
<u>as a part of the class A, B, or C licensee's or employee's</u>	155
<u>official responsibilities or duties, unless the class A, B, or C</u>	156
<u>licensee or employee has the consent of the owner or lessee of</u>	157
<u>the motor vehicle.</u>	158
<u>(h) A probation officer, parole officer, or employee of</u>	159
<u>the department of rehabilitation and correction, if the officer</u>	160
<u>or employee is engaged in the lawful performance of the</u>	161
<u>officer's or employee's official duties;</u>	162
<u>(i) A person or business entity that installs or uses a</u>	163
<u>tracking device or tracking application on any fixed wing</u>	164
<u>aircraft or rotorcraft operated or managed by the person or</u>	165

<u>business entity pursuant to 14 C.F.R. part 91 or part 135;</u>	166
<u>(j) A person who installs or uses a tracking device or</u>	167
<u>tracking application on another person's property in which the</u>	168
<u>person has an ownership or contractual interest, unless the</u>	169
<u>person is the subject of a protection order and the property is</u>	170
<u>likely to be used by the person who obtained the protection</u>	171
<u>order.</u>	172
<u>(C) Whoever violates division (A) of this section is</u>	173
guilty of menacing by stalking.	174
(1) Except as otherwise provided in divisions (B) <u>(2)</u> <u>(C) (2)</u>	175
and (3) of this section, menacing by stalking is a misdemeanor	176
of the first degree.	177
(2) Menacing by stalking is a felony of the fourth degree	178
if any of the following applies:	179
(a) The offender previously has been convicted of or	180
pleaded guilty to a violation of this section or a violation of	181
section 2911.211 of the Revised Code.	182
(b) In committing the offense under division (A) (1), (2),	183
or (3) of this section, the offender made a threat of physical	184
harm to or against the victim, or as a result of an offense	185
committed under division (A) (2) or (3) of this section, a third	186
person induced by the offender's posted message made a threat of	187
physical harm to or against the victim.	188
(c) In committing the offense under division (A) (1), (2),	189
or (3) of this section, the offender trespassed on the land or	190
premises where the victim lives, is employed, or attends school,	191
or as a result of an offense committed under division (A) (2) or	192
(3) of this section, a third person induced by the offender's	193
posted message trespassed on the land or premises where the	194

victim lives, is employed, or attends school.	195
(d) The victim of the offense is a minor.	196
(e) The offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person.	197 198 199
(f) While committing the offense under division (A)(1) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(1) of this section, the offender had a deadly weapon on or about the offender's person or under the offender's control. Division (B) (2)-(f)-(C)(2)(f) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section or a violation of division (A)(3) of this section based on conduct in violation of division (A)(2) of this section.	200 201 202 203 204 205 206 207 208
(g) At the time of the commission of the offense, the offender was the subject of a protection order issued under section 2903.213 or 2903.214 of the Revised Code, regardless of whether the person to be protected under the order is the victim of the offense or another person.	209 210 211 212 213
(h) In committing the offense under division (A)(1), (2), or (3) of this section, the offender caused serious physical harm to the premises at which the victim resides, to the real property on which that premises is located, or to any personal property located on that premises, or, as a result of an offense committed under division (A)(2) of this section or an offense committed under division (A)(3) of this section based on a violation of division (A)(2) of this section, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal	214 215 216 217 218 219 220 221 222 223

property on that premises. 224

(i) Prior to committing the offense, the offender had been 225
determined to represent a substantial risk of physical harm to 226
others as manifested by evidence of then-recent homicidal or 227
other violent behavior, evidence of then-recent threats that 228
placed another in reasonable fear of violent behavior and 229
serious physical harm, or other evidence of then-present 230
dangerousness. 231

(3) If the victim of the offense is an officer or employee 232
of a public children services agency or a private child placing 233
agency and the offense relates to the officer's or employee's 234
performance or anticipated performance of official 235
responsibilities or duties, menacing by stalking is either a 236
felony of the fifth degree or, if the offender previously has 237
been convicted of or pleaded guilty to an offense of violence, 238
the victim of that prior offense was an officer or employee of a 239
public children services agency or private child placing agency, 240
and that prior offense related to the officer's or employee's 241
performance or anticipated performance of official 242
responsibilities or duties, a felony of the fourth degree. 243

(C) (1) Except as otherwise provided in division (D) (2) 244
of this section, whoever violates division (B) of this section 245
is guilty of illegal use of a tracking device or application, a 246
misdemeanor of the first degree. 247

(2) Illegal use of a tracking device or application is a 248
felony of the fourth degree, if division (C) (2) (a), (e), (g), or 249
(i) of this section applies. 250

(E) Section 2919.271 of the Revised Code applies in 251
relation to a defendant charged with a violation of this 252

section. 253

(D)(F) As used in this section: 254

(1) "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, 255
or two or more actions or incidents closely related in time, 256
whether or not there has been a prior conviction based on any of 257
those actions or incidents, directed at one or more persons 258
employed by or belonging to the same corporation, association, 259
or other organization. Actions or incidents that prevent, 260
obstruct, or delay the performance by a public official, 261
firefighter, rescuer, emergency medical services person, or 262
emergency facility person of any authorized act within the 263
public official's, firefighter's, rescuer's, emergency medical 264
services person's, or emergency facility person's official 265
capacity, or the posting of messages, use of intentionally 266
written or verbal graphic gestures, or receipt of information or 267
data through the use of any form of written communication or an 268
electronic method of remotely transferring information, 269
including, but not limited to, a computer, computer network, 270
computer program, computer system, or telecommunications device, 271
may constitute a "pattern of conduct." 272
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(2) "Mental distress" means any of the following: 275

(a) Any mental illness or condition that involves some
temporary substantial incapacity; 276
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(b) 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
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other mental health services.	282
(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.	283 284 285
(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.	286 287 288
(5) "Public official" has the same meaning as in section 2921.01 of the Revised Code.	289 290
(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.	291 292 293
(7) "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.	294 295 296 297 298 299 300
(8) "Third person" means, in relation to conduct as described in division (A) (2) of this section, an individual who is neither the offender nor the victim of the conduct.	301 302 303
(9) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code.	304 305
(10) "Organization" includes an entity that is a governmental employer.	306 307
(11) "Family or household member" means any of the following:	308 309

(a) Any of the following who is residing or has resided with the person against whom the act prohibited in division (A)	310 311
(1) of this section is committed:	312
(i) A spouse, a person living as a spouse, or a former spouse of the person;	313 314
(ii) A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person;	315 316 317
(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person.	318 319 320 321
(b) The natural parent of any child of whom the person against whom the act prohibited in division (A) (1) of this section is committed is the other natural parent or is the putative other natural parent.	322 323 324 325
(12) "Person living as a spouse" means a person who is living or has lived with the person against whom the act prohibited in division (A) (1) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited with the person within five years prior to the date of the alleged commission of the act in question.	326 327 328 329 330 331 332
<u>(E)(13) "Business entity" means any form of corporation,</u> <u>partnership, association, cooperative, joint venture, business</u> <u>trust, or sole proprietorship that conducts business in this</u> <u>state.</u>	333 334 335 336
<u>(14) "Business of private investigation," "business of</u> <u>security services," "class A license," "class B license," and</u>	337 338

<u>"class C license"</u> have the same meanings as in section 4749.01 of the Revised Code.	339 340
<u>(15) "Disabled adult"</u> and <u>"elderly person"</u> have the same meanings as in section 2913.01 of the Revised Code.	341 342
<u>(16) "Law enforcement agency"</u> means any organization or unit comprised of law enforcement officers, and also includes any federal or military law enforcement agency.	343 344 345
<u>(17) "Person"</u> means an individual, but does not include a business entity.	346 347
<u>(18) "Surety bail bond agent"</u> means a person who is qualified, licensed, and appointed as provided in sections 3905.83 to 3905.95 of the Revised Code.	348 349 350
<u>(19) "Tracking application"</u> means any software program that allows a person to remotely determine or track the position or movement of another person or another person's property.	351 352 353
<u>(20) "Tracking device"</u> means any electronic or mechanical device that allows a person to remotely determine or track the position or movement of another person or another person's property.	354 355 356 357
<u>(G)</u> The state does not need to prove in a prosecution under <u>for a violation of division (A) of this section</u> 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 division <u>(D)(2)(b)–(F)(2)(b)</u> of this section.	358 359 360 361 362 363
<u>(F)(1) This</u> <u>(H)(1) Division (A) of this</u> section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely	364 365 366

transferring information not under that person's control, 367
including having provided capabilities that are incidental to 368
providing access or connection to or from the electronic method 369
of remotely transferring the information, and that do not 370
include the creation of the content of the material that is the 371
subject of the access or connection. In addition, any person 372
providing access or connection to or from an electronic method 373
of remotely transferring information not under that person's 374
control shall not be liable for any action voluntarily taken in 375
good faith to block the receipt or transmission through its 376
service of any information that it believes is, or will be sent, 377
in violation of division (A) of this section. 378

(2) Division ~~(F)(1)(H)(1)~~ of this section does not create 379
an affirmative duty for any person providing access or 380
connection to or from an electronic method of remotely 381
transferring information not under that person's control to 382
block the receipt or transmission through its service of any 383
information that it believes is, or will be sent, in violation 384
of this section except as otherwise provided by law. 385

(3) Division ~~(F)(1)(H)(1)~~ of this section does not apply 386
to a person who conspires with a person actively involved in the 387
creation or knowing distribution of material in violation of 388
this section or who knowingly advertises the availability of 389
material of that nature. 390

Section 2. That existing section 2903.211 of the Revised 391
Code is hereby repealed. 392