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135th General Assembly
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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.

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 19
offender that are directed at or identify a corporation, 20
association, or other organization that employs the other person 21
or to which the other person belongs. 22

(2) No person, through the use of any form of written 23
communication or any electronic method of remotely transferring 24
information, including, but not limited to, any computer, 25
computer network, computer program, computer system, or 26
telecommunication device shall post a message or use any 27
intentionally written or verbal graphic gesture with purpose to 28
do either of the following: 29

(a) Violate division (A) (1) of this section; 30

(b) Urge or incite another to commit a violation of 31
division (A) (1) of this section. 32

(3) No person, with a sexual motivation, shall violate 33
division (A) (1) or (2) of this section. 34

~~(B)~~ (B) (1) Except as otherwise provided in division (B) (3) 35
of this section, no person shall knowingly do any of the 36
following without the other person's consent: 37

(a) Install a tracking device or tracking application on 38
another person or another person's property; 39

(b) Use a tracking device or tracking application to 40
remotely determine or track the position or movement of another 41
person or another person's property. 42

(2) For purposes of division (B) (1) of this section, if a 43
person has given consent for another to install or use a 44
tracking device or tracking application on the consenting 45
person's person or the person's property, the consenting 46

person's consent is presumed to be revoked if either of the 47
following applies: 48

(a) The consenting person and the person to whom consent 49
was given are lawfully married and one of them files a complaint 50
for divorce or a petition for dissolution of marriage from the 51
other. Not later than five days after being served with a 52
complaint for divorce or a petition for dissolution of marriage, 53
the person to whom consent was given shall lawfully uninstall or 54
discontinue use of the tracking device or application. If the 55
person to whom consent was given cannot lawfully uninstall or 56
discontinue use of the tracking device or tracking application, 57
the person to whom consent was given shall notify the court in 58
which the complaint for divorce or the petition for dissolution 59
of marriage was filed in writing that the person to whom consent 60
was given has installed or is using a tracking device or 61
tracking application on the previously consenting person's 62
person or the person's property and cannot uninstall or 63
discontinue its use without violating a court order. 64

(b) The consenting person or the person to whom consent 65
was given files a petition or motion under section 2151.34, 66
2903.213, 2903.214, 2919.26, or 3113.31 of the Revised Code 67
requesting the issuance against the other person of a protection 68
order or temporary protection order. Not later than seventy-two 69
hours after being served with the ex parte protection order, 70
protection order, or temporary protection order, the person to 71
whom consent was given shall lawfully uninstall or discontinue 72
use of the tracking device or application. If the person to whom 73
consent was given cannot lawfully uninstall or discontinue use 74
of the tracking device or tracking application, the person to 75
whom consent was given shall notify the court that issued the ex 76
parte protection order, protection order, or temporary 77

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

(c) A caregiver of an elderly person or disabled adult, if 107
the elderly person's or disabled adult's treating physician 108
certifies that the installation or use of a tracking device or 109
tracking application on the elderly person or disabled adult or 110
onto the elderly person's or disabled adult's property is 111
necessary to ensure the safety of the elderly person or disabled 112
adult; 113

(d) A person acting in good faith on behalf of a business 114
entity for a legitimate business purpose; 115

(e) An owner or lessee of a motor vehicle who installs or 116
uses, or directs the installation or use of, a tracking device 117
or tracking application on the vehicle during the period of 118
ownership or lease, if any of the following applies: 119

(i) The tracking device or tracking application is removed 120
before the vehicle's title is transferred or the vehicle's lease 121
expires. 122

(ii) The new owner of the vehicle, in the case of a sale, 123
or the lessor of the vehicle, in the case of an expired lease, 124
consents in writing to the non-removal of the tracking device or 125
tracking application. 126

(iii) The owner of the vehicle at the time of the 127
installation or use of the tracking device or tracking 128
application was the original manufacturer of the vehicle. 129

(f) A surety bail bond agent, or any employee or 130
contractor of a surety bail bond agent, that lawfully installs 131
or uses a tracking device or tracking application on another 132
person or another person's property as part of the surety bail 133
bond agent's, employee's, or contractor's official 134
responsibilities or duties; 135

(g) (i) Except as otherwise provided in divisions (B) (3) (g) 136
(ii) and (iii) of this section, a class A, B, or C licensee, or 137
any employee of a class A, B, or C licensee, who lawfully 138
installs or uses a tracking device or tracking application on 139
another person or another person's property as part of the class 140
A, B, or C licensee's or employee's official responsibilities or 141
duties; 142

(ii) A class A, B, or C licensee, or any employee of a 143
class A, B, or C licensee, shall not install or use a tracking 144
device or tracking application on another person or another 145
person's property as a part of the class A, B, or C licensee's 146
or employee's official responsibilities or duties, if the class 147
A, B, or C licensee or employee is hired by a district board of 148
education or governing authority of a school and the purpose for 149
which the class A, B, or C licensee or employee is hired is to 150
determine a student's position, movement, or address; 151

(iii) A class A, B, or C licensee, or any employee of a 152
class A, B, or C licensee, shall not install or use a tracking 153
device or tracking application on another person's motor vehicle 154
as a part of the class A, B, or C licensee's or employee's 155
official responsibilities or duties, unless the class A, B, or C 156
licensee or employee has the consent of the owner or lessee of 157
the motor vehicle. 158

(h) A probation officer, parole officer, or employee of 159
the department of rehabilitation and correction, if the officer 160
or employee is engaged in the lawful performance of the 161
officer's or employee's official duties; 162

(i) A person or business entity that installs or uses a 163
tracking device or tracking application on any fixed wing 164
aircraft or rotorcraft operated or managed by the person or 165

business entity pursuant to 14 C.F.R. part 91 or part 135; 166

(j) A person who installs or uses a tracking device or 167
tracking application on another person's property in which the 168
person has an ownership or contractual interest, unless the 169
person is the subject of a protection order and the property is 170
likely to be used by the person who obtained the protection 171
order. 172

(C) Whoever violates division (A) of this section is 173
guilty of menacing by stalking. 174

(1) Except as otherwise provided in divisions ~~(B) (2)~~ (C) (2) 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) <u>(C) (2) (f)</u> 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)~~(D) (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, 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. 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, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or 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."	255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274
(2) "Mental distress" means any of the following:	275
(a) Any mental illness or condition that involves some temporary substantial incapacity;	276 277
(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	278 279 280 281

other mental health services.	282
(3) "Emergency medical services person" is the singular of	283
"emergency medical services personnel" as defined in section	284
2133.21 of the Revised Code.	285
(4) "Emergency facility person" is the singular of	286
"emergency facility personnel" as defined in section 2909.04 of	287
the Revised Code.	288
(5) "Public official" has the same meaning as in section	289
2921.01 of the Revised Code.	290
(6) "Computer," "computer network," "computer program,"	291
"computer system," and "telecommunications device" have the same	292
meanings as in section 2913.01 of the Revised Code.	293
(7) "Post a message" means transferring, sending, posting,	294
publishing, disseminating, or otherwise communicating, or	295
attempting to transfer, send, post, publish, disseminate, or	296
otherwise communicate, any message or information, whether	297
truthful or untruthful, about an individual, and whether done	298
under one's own name, under the name of another, or while	299
impersonating another.	300
(8) "Third person" means, in relation to conduct as	301
described in division (A) (2) of this section, an individual who	302
is neither the offender nor the victim of the conduct.	303
(9) "Sexual motivation" has the same meaning as in section	304
2971.01 of the Revised Code.	305
(10) "Organization" includes an entity that is a	306
governmental employer.	307
(11) "Family or household member" means any of the	308
following:	309

(a) Any of the following who is residing or has resided 310
with the person against whom the act prohibited in division (A) 311
(1) of this section is committed: 312

(i) A spouse, a person living as a spouse, or a former 313
spouse of the person; 314

(ii) A parent, a foster parent, or a child of the person, 315
or another person related by consanguinity or affinity to the 316
person; 317

(iii) A parent or a child of a spouse, person living as a 318
spouse, or former spouse of the person, or another person 319
related by consanguinity or affinity to a spouse, person living 320
as a spouse, or former spouse of the person. 321

(b) The natural parent of any child of whom the person 322
against whom the act prohibited in division (A) (1) of this 323
section is committed is the other natural parent or is the 324
putative other natural parent. 325

(12) "Person living as a spouse" means a person who is 326
living or has lived with the person against whom the act 327
prohibited in division (A) (1) of this section is committed in a 328
common law marital relationship, who otherwise is cohabiting 329
with that person, or who otherwise has cohabited with the person 330
within five years prior to the date of the alleged commission of 331
the act in question. 332

~~(E)~~ (13) "Business entity" means any form of corporation, 333
partnership, association, cooperative, joint venture, business 334
trust, or sole proprietorship that conducts business in this 335
state. 336

(14) "Business of private investigation," "business of 337
security services," "class A license," "class B license," and 338

"class C license" have the same meanings as in section 4749.01 339
of the Revised Code. 340

(15) "Disabled adult" and "elderly person" have the same 341
meanings as in section 2913.01 of the Revised Code. 342

(16) "Law enforcement agency" means any organization or 343
unit comprised of law enforcement officers, and also includes 344
any federal or military law enforcement agency. 345

(17) "Person" means an individual, but does not include a 346
business entity. 347

(18) "Surety bail bond agent" means a person who is 348
qualified, licensed, and appointed as provided in sections 349
3905.83 to 3905.95 of the Revised Code. 350

(19) "Tracking application" means any software program 351
that allows a person to remotely determine or track the position 352
or movement of another person or another person's property. 353

(20) "Tracking device" means any electronic or mechanical 354
device that allows a person to remotely determine or track the 355
position or movement of another person or another person's 356
property. 357

(G) The state does not need to prove in a prosecution 358
under for a violation of division (A) of this section that a 359
person requested or received psychiatric treatment, 360
psychological treatment, or other mental health services in 361
order to show that the person was caused mental distress as 362
described in division ~~(D) (2) (b)~~ (F) (2) (b) of this section. 363

~~(F) (1) This~~ (H) (1) Division (A) of this section does not 364
apply to a person solely because the person provided access or 365
connection to or from an electronic method of remotely 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