

As Introduced

135th General Assembly

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H. B. No. 91

Representative Patton

A BILL

To amend section 2903.211 of the Revised Code to 1
generally prohibit a person from knowingly 2
installing a tracking device or application on 3
another person's property without the other 4
person's consent. 5

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

Section 1. That section 2903.211 of the Revised Code be 6
amended to read as follows: 7

Sec. 2903.211. (A) (1) No person by engaging in a pattern 8
of conduct shall knowingly cause another person to believe that 9
the offender will cause physical harm to the other person or a 10
family or household member of the other person or cause mental 11
distress to the other person or a family or household member of 12
the other person. In addition to any other basis for the other 13
person's belief that the offender will cause physical harm to 14
the other person or the other person's family or household 15
member or mental distress to the other person or the other 16
person's family or household member, the other person's belief 17
or mental distress may be based on words or conduct of the 18
offender that are directed at or identify a corporation, 19

association, or other organization that employs the other person 20
or to which the other person belongs. 21

(2) No person, through the use of any form of written 22
communication or any electronic method of remotely transferring 23
information, including, but not limited to, any computer, 24
computer network, computer program, computer system, or 25
telecommunication device shall post a message or use any 26
intentionally written or verbal graphic gesture with purpose to 27
do either of the following: 28

(a) Violate division (A) (1) of this section; 29

(b) Urge or incite another to commit a violation of 30
division (A) (1) of this section. 31

(3) No person, with a sexual motivation, shall violate 32
division (A) (1) or (2) of this section. 33

~~(B)~~ (B) (1) Except as otherwise provided in division (B) (3) 34
of this section, no person shall knowingly install a tracking 35
device or tracking application on another person's property 36
without the other person's consent. 37

(2) For purposes of this section, if a person has given 38
consent for another to install a tracking device or tracking 39
application on the consenting person's property, the consenting 40
person's consent is presumed to be revoked if either of the 41
following applies: 42

(a) The consenting person and the person to whom consent 43
was given are lawfully married and one of them files a petition 44
for divorce or dissolution of marriage from the other. 45

(b) The consenting person or the person to whom consent 46
was given files a petition or motion under section 2151.34, 47

2903.213, 2903.214, 2919.26, or 3113.31 of the Revised Code 48
requesting the issuance against the other person of a protection 49
order or temporary protection order. 50

(3) This section does not apply to any of the following: 51

(a) A law enforcement officer, or any law enforcement 52
agency, that lawfully installs a tracking device or tracking 53
application on another person's property as part of a criminal 54
investigation; 55

(b) A parent or legal guardian of a minor child who 56
installs a tracking device or tracking application on the minor 57
child's property if any of the following applies: 58

(i) The parents or legal guardians of the child are 59
lawfully married to each other and are not separated or 60
otherwise living apart, and either of those parents or legal 61
guardians consents to the installation of the tracking device or 62
tracking application. 63

(ii) The parent or legal guardian of the child is the sole 64
surviving parent or legal guardian of the child. 65

(iii) The parent or legal guardian of the child has sole 66
custody of the child. 67

(iv) The parents or legal guardians of the child are 68
divorced, separated, or otherwise living apart and both consent 69
to the installation of the tracking device or tracking 70
application. 71

(c) A caregiver of an elderly person or disabled adult, if 72
the elderly person's or disabled adult's treating physician 73
certifies that the installation of a tracking device or tracking 74
application onto the elderly person's or disabled adult's 75

property is necessary to ensure the safety of the elderly person 76
or disabled adult; 77

(d) A person acting in good faith on behalf of a business 78
entity for a legitimate business purpose, provided that this 79
division does not apply to a private investigator engaged in the 80
business of private investigation on behalf of another person 81
unless the activities would otherwise be exempt under division 82
(B) (3) of this section if performed by the person engaging the 83
private investigator; 84

(e) An owner or lessee of a motor vehicle who installs, or 85
directs the installation of, a tracking device or tracking 86
application on the vehicle during the period of ownership or 87
lease, if any of the following applies: 88

(i) The tracking device or tracking application is removed 89
before the vehicle's title is transferred or the vehicle's lease 90
expires. 91

(ii) The new owner of the vehicle, in the case of a sale, 92
or the lessor of the vehicle, in the case of an expired lease, 93
consents in writing to the non-removal of the tracking device or 94
tracking application. 95

(iii) The owner of the vehicle at the time of the 96
installation of the tracking device or tracking application was 97
the original manufacturer of the vehicle. 98

(C) Whoever violates division (A) of this section is 99
guilty of menacing by stalking. 100

(1) Except as otherwise provided in divisions ~~(B) (2)~~ (C) (2) 101
and (3) of this section, menacing by stalking is a misdemeanor 102
of the first degree. 103

(2) Menacing by stalking is a felony of the fourth degree 104
if any of the following applies: 105

(a) The offender previously has been convicted of or 106
pleaded guilty to a violation of this section or a violation of 107
section 2911.211 of the Revised Code. 108

(b) In committing the offense under division (A) (1), (2), 109
or (3) of this section, the offender made a threat of physical 110
harm to or against the victim, or as a result of an offense 111
committed under division (A) (2) or (3) of this section, a third 112
person induced by the offender's posted message made a threat of 113
physical harm to or against the victim. 114

(c) In committing the offense under division (A) (1), (2), 115
or (3) of this section, the offender trespassed on the land or 116
premises where the victim lives, is employed, or attends school, 117
or as a result of an offense committed under division (A) (2) or 118
(3) of this section, a third person induced by the offender's 119
posted message trespassed on the land or premises where the 120
victim lives, is employed, or attends school. 121

(d) The victim of the offense is a minor. 122

(e) The offender has a history of violence toward the 123
victim or any other person or a history of other violent acts 124
toward the victim or any other person. 125

(f) While committing the offense under division (A) (1) of 126
this section or a violation of division (A) (3) of this section 127
based on conduct in violation of division (A) (1) of this 128
section, the offender had a deadly weapon on or about the 129
offender's person or under the offender's control. Division ~~(B)~~ 130
~~(2) (f)~~ (C) (2) (f) of this section does not apply in determining 131
the penalty for a violation of division (A) (2) of this section 132

or a violation of division (A) (3) of this section based on 133
conduct in violation of division (A) (2) of this section. 134

(g) At the time of the commission of the offense, the 135
offender was the subject of a protection order issued under 136
section 2903.213 or 2903.214 of the Revised Code, regardless of 137
whether the person to be protected under the order is the victim 138
of the offense or another person. 139

(h) In committing the offense under division (A) (1), (2), 140
or (3) of this section, the offender caused serious physical 141
harm to the premises at which the victim resides, to the real 142
property on which that premises is located, or to any personal 143
property located on that premises, or, as a result of an offense 144
committed under division (A) (2) of this section or an offense 145
committed under division (A) (3) of this section based on a 146
violation of division (A) (2) of this section, a third person 147
induced by the offender's posted message caused serious physical 148
harm to that premises, that real property, or any personal 149
property on that premises. 150

(i) Prior to committing the offense, the offender had been 151
determined to represent a substantial risk of physical harm to 152
others as manifested by evidence of then-recent homicidal or 153
other violent behavior, evidence of then-recent threats that 154
placed another in reasonable fear of violent behavior and 155
serious physical harm, or other evidence of then-present 156
dangerousness. 157

(3) If the victim of the offense is an officer or employee 158
of a public children services agency or a private child placing 159
agency and the offense relates to the officer's or employee's 160
performance or anticipated performance of official 161
responsibilities or duties, menacing by stalking is either a 162

felony of the fifth degree or, if the offender previously has 163
been convicted of or pleaded guilty to an offense of violence, 164
the victim of that prior offense was an officer or employee of a 165
public children services agency or private child placing agency, 166
and that prior offense related to the officer's or employee's 167
performance or anticipated performance of official 168
responsibilities or duties, a felony of the fourth degree. 169

~~(C)~~ (D) Whoever violates division (B) of this section is 170
guilty of "illegal use of a tracking device or application," a 171
misdemeanor of the first degree. 172

(E) Section 2919.271 of the Revised Code applies in 173
relation to a defendant charged with a violation of this 174
section. 175

~~(D)~~ (F) As used in this section: 176

(1) "Pattern of conduct" means two or more actions or 177
incidents closely related in time, whether or not there has been 178
a prior conviction based on any of those actions or incidents, 179
or two or more actions or incidents closely related in time, 180
whether or not there has been a prior conviction based on any of 181
those actions or incidents, directed at one or more persons 182
employed by or belonging to the same corporation, association, 183
or other organization. Actions or incidents that prevent, 184
obstruct, or delay the performance by a public official, 185
firefighter, rescuer, emergency medical services person, or 186
emergency facility person of any authorized act within the 187
public official's, firefighter's, rescuer's, emergency medical 188
services person's, or emergency facility person's official 189
capacity, or the posting of messages, use of intentionally 190
written or verbal graphic gestures, or receipt of information or 191
data through the use of any form of written communication or an 192

electronic method of remotely transferring information, 193
including, but not limited to, a computer, computer network, 194
computer program, computer system, or telecommunications device, 195
may constitute a "pattern of conduct." 196

(2) "Mental distress" means any of the following: 197

(a) Any mental illness or condition that involves some 198
temporary substantial incapacity; 199

(b) Any mental illness or condition that would normally 200
require psychiatric treatment, psychological treatment, or other 201
mental health services, whether or not any person requested or 202
received psychiatric treatment, psychological treatment, or 203
other mental health services. 204

(3) "Emergency medical services person" is the singular of 205
"emergency medical services personnel" as defined in section 206
2133.21 of the Revised Code. 207

(4) "Emergency facility person" is the singular of 208
"emergency facility personnel" as defined in section 2909.04 of 209
the Revised Code. 210

(5) "Public official" has the same meaning as in section 211
2921.01 of the Revised Code. 212

(6) "Computer," "computer network," "computer program," 213
"computer system," and "telecommunications device" have the same 214
meanings as in section 2913.01 of the Revised Code. 215

(7) "Post a message" means transferring, sending, posting, 216
publishing, disseminating, or otherwise communicating, or 217
attempting to transfer, send, post, publish, disseminate, or 218
otherwise communicate, any message or information, whether 219
truthful or untruthful, about an individual, and whether done 220

under one's own name, under the name of another, or while 221
impersonating another. 222

(8) "Third person" means, in relation to conduct as 223
described in division (A)(2) of this section, an individual who 224
is neither the offender nor the victim of the conduct. 225

(9) "Sexual motivation" has the same meaning as in section 226
2971.01 of the Revised Code. 227

(10) "Organization" includes an entity that is a 228
governmental employer. 229

(11) "Family or household member" means any of the 230
following: 231

(a) Any of the following who is residing or has resided 232
with the person against whom the act prohibited in division (A) 233
(1) of this section is committed: 234

(i) A spouse, a person living as a spouse, or a former 235
spouse of the person; 236

(ii) A parent, a foster parent, or a child of the person, 237
or another person related by consanguinity or affinity to the 238
person; 239

(iii) A parent or a child of a spouse, person living as a 240
spouse, or former spouse of the person, or another person 241
related by consanguinity or affinity to a spouse, person living 242
as a spouse, or former spouse of the person. 243

(b) The natural parent of any child of whom the person 244
against whom the act prohibited in division (A)(1) of this 245
section is committed is the other natural parent or is the 246
putative other natural parent. 247

(12) "Person living as a spouse" means a person who is 248
living or has lived with the person against whom the act 249
prohibited in division (A) (1) of this section is committed in a 250
common law marital relationship, who otherwise is cohabiting 251
with that person, or who otherwise has cohabited with the person 252
within five years prior to the date of the alleged commission of 253
the act in question. 254

~~(E)~~ (13) "Business entity" means any form of corporation, 255
partnership, association, cooperative, joint venture, business 256
trust, or sole proprietorship that conducts business in this 257
state. 258

(14) "Business of private investigation" and "private 259
investigator" have the same meanings as in section 4749.01 of 260
the Revised Code. 261

(15) "Disabled adult" and "elderly person" have the same 262
meanings as in section 2913.01 of the Revised Code. 263

(16) "Law enforcement agency" means any organization or 264
unit comprised of law enforcement officers, and also includes 265
any federal or military law enforcement agency. 266

(17) "Person" means an individual, but does not include a 267
business entity. 268

(18) "Tracking application" means any software program, 269
the primary purpose of which is to track or identify the 270
location or movement of an individual. 271

(19) "Tracking device" means any device, the primary 272
purpose of which is to reveal its location or movement by the 273
transmission of electronic signals. 274

(G) The state does not need to prove in a prosecution 275

~~under~~ for a violation of division (A) of this section that a 276
person requested or received psychiatric treatment, 277
psychological treatment, or other mental health services in 278
order to show that the person was caused mental distress as 279
described in division ~~(D) (2) (b)~~ (F) (2) (b) of this section. 280

~~(F) (1)~~ This (H) (1) Division (A) of this section does not 281
apply to a person solely because the person provided access or 282
connection to or from an electronic method of remotely 283
transferring information not under that person's control, 284
including having provided capabilities that are incidental to 285
providing access or connection to or from the electronic method 286
of remotely transferring the information, and that do not 287
include the creation of the content of the material that is the 288
subject of the access or connection. In addition, any person 289
providing access or connection to or from an electronic method 290
of remotely transferring information not under that person's 291
control shall not be liable for any action voluntarily taken in 292
good faith to block the receipt or transmission through its 293
service of any information that it believes is, or will be sent, 294
in violation of division (A) of this section. 295

(2) Division ~~(F) (1)~~ (H) (1) of this section does not create 296
an affirmative duty for any person providing access or 297
connection to or from an electronic method of remotely 298
transferring information not under that person's control to 299
block the receipt or transmission through its service of any 300
information that it believes is, or will be sent, in violation 301
of this section except as otherwise provided by law. 302

(3) Division ~~(F) (1)~~ (H) (1) of this section does not apply 303
to a person who conspires with a person actively involved in the 304
creation or knowing distribution of material in violation of 305

this section or who knowingly advertises the availability of	306
material of that nature.	307
Section 2. That existing section 2903.211 of the Revised	308
Code is hereby repealed.	309