

**As Passed by the House**

**125th General Assembly  
Regular Session  
2003-2004**

**Sub. S. B. No. 8**

**Senators Austria, Amstutz, Jacobson, Spada, Harris, Mumper,  
Randy Gardner, Prentiss, Miller, DiDonato, Fedor, Stivers, Herington,  
Goodman, Carey, Roberts, Brady, Schuring, Armbruster, Schuler, Coughlin,  
Carnes, Dann, Fingerhut, Hagan, Robert Gardner, Mallory, Nein  
Representatives Willamowski, Widowfield, DePiero, Allen, Aslanides, Barrett,  
Beatty, Boccieri, Brown, Carmichael, Cates, Chandler, Cirelli, Clancy,  
Daniels, DeBose, Distel, Domenick, C. Evans, D. Evans, Fessler, Flowers,  
Gibbs, Gilb, Grendell, Hagan, Hartnett, Harwood, Hughes, Kearns, Key,  
Kilbane, Koziura, Latta, Martin, Mason, McGregor, Niehaus, Otterman,  
S. Patton, T. Patton, Perry, Price, Raussen, Redfern, Reidelbach, Schaffer,  
Schlichter, Schmidt, Seaver, Sferra, S. Smith, D. Stewart, J. Stewart, Sykes,  
Taylor, Ujvagi, Widener, Wolpert, Woodard, Yates**

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**A B I L L**

To amend section 2903.211 of the Revised Code to 1  
expand menacing by stalking to prohibit the 2  
posting of a computer-related message with intent 3  
to urge or incite a person to illegally stalk 4  
another, to specifically include electronic 5  
communication and telecommunication as a pattern 6  
of conduct under the crime, and to clarify the 7  
nature of the mental distress that constitutes an 8  
element of the crime. 9

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

Section 1. That section 2903.211 of the Revised Code be 10  
amended to read as follows: 11

Sec. 2903.211. (A)(1) No person by engaging in a pattern of 12  
conduct shall knowingly cause another person to believe that the 13  
offender will cause physical harm to the other person or cause 14  
mental distress to the other person. 15

(2) No person, through the use of any electronic method of 16  
remotely transferring information, including, but not limited to,  
any computer, computer network, computer program, or computer 17  
system, shall post a message with purpose to urge or incite 18  
another to commit a violation of division (A)(1) of this section. 19  
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(B) Whoever violates this section is guilty of menacing by 21  
stalking. 22

(1) Except as otherwise provided in divisions (B)(2) and (3) 23  
of this section, menacing by stalking is a misdemeanor of the 24  
first degree. 25

(2) Menacing by stalking is a felony of the fourth degree if 26  
any of the following applies: 27

(a) The offender previously has been convicted of or pleaded 28  
guilty to a violation of this section or a violation of section 29  
2911.211 of the Revised Code. 30

(b) In committing the offense under division (A)(1) or (2) of 31  
this section, the offender made a threat of physical harm to or 32  
against the victim, or as a result of an offense committed under 33  
division (A)(2) of this section, a third person induced by the 34  
offender's posted message made a threat of physical harm to or 35  
against the victim. 36

(c) In committing the offense under division (A)(1) or (2) of 37  
this section, the offender trespassed on the land or premises 38

where the victim lives, is employed, or attends school, or as a 39  
result of an offense committed under division (A)(2) of this 40  
section, a third person induced by the offender's posted message 41  
trespassed on the land or premises where the victim lives, is 42  
employed, or attends school. 43

(d) The victim of the offense is a minor. 44

(e) The offender has a history of violence toward the victim 45  
or any other person or a history of other violent acts toward the 46  
victim or any other person. 47

(f) While committing the offense under division (A)(1) of 48  
this section, the offender had a deadly weapon on or about the 49  
offender's person or under the offender's control. Division 50  
(B)(2)(f) of this section does not apply in determining the 51  
penalty for a violation of division (A)(2) of this section. 52

(g) At the time of the commission of the offense, the 53  
offender was the subject of a protection order issued under 54  
section 2903.213 or 2903.214 of the Revised Code, regardless of 55  
whether the person to be protected under the order is the victim 56  
of the offense or another person. 57

(h) In committing the offense under division (A)(1) or (2) of 58  
this section, the offender caused serious physical harm to the 59  
premises at which the victim resides, to the real property on 60  
which that premises is located, or to any personal property 61  
located on that premises, or as a result of an offense committed 62  
under division (A)(2) of this section, a third person induced by 63  
the offender's posted message caused serious physical harm to that 64  
premises, that real property, or any personal property on that 65  
premises. 66

(i) Prior to committing the offense, the offender had been 67  
determined to represent a substantial risk of physical harm to 68  
others as manifested by evidence of then-recent homicidal or other 69

violent behavior, evidence of then-recent threats that placed 70  
another in reasonable fear of violent behavior and serious 71  
physical harm, or other evidence of then-present dangerousness. 72

(3) If the victim of the offense is an officer or employee of 73  
a public children services agency or a private child placing 74  
agency and the offense relates to the officer's or employee's 75  
performance or anticipated performance of official 76  
responsibilities or duties, menacing by stalking is either a 77  
felony of the fifth degree or, if the offender previously has been 78  
convicted of or pleaded guilty to an offense of violence, the 79  
victim of that prior offense was an officer or employee of a 80  
public children services agency or private childplacing agency, 81  
and that prior offense related to the officer's or employee's 82  
performance or anticipated performance of official 83  
responsibilities or duties, a felony of the fourth degree. 84

(C) Section 2919.271 of the Revised Code applies in relation 85  
to a defendant charged with a violation of this section. 86

(D) As used in this section: 87

(1) "Pattern of conduct" means two or more actions or 88  
incidents closely related in time, whether or not there has been a 89  
prior conviction based on any of those actions or incidents. 90  
Actions or incidents that prevent, obstruct, or delay the 91  
performance by a public official, firefighter, rescuer, emergency 92  
medical services person, or emergency facility person of any 93  
authorized act within the public official's, firefighter's, 94  
rescuer's, emergency medical services person's, or emergency 95  
facility person's official capacity, or the posting of messages or 96  
receipt of information or data through the use of an electronic 97  
method of remotely transferring information, including, but not 98  
limited to, a computer, computer network, computer program, 99  
computer system, or telecommunications device, may constitute a 100  
"pattern of conduct." 101

(2) "Mental distress" means any <u>of the following:</u>	102
(a) <u>Any</u> mental illness or condition that involves some	103
temporary substantial incapacity <del>or</del> ;	104
(b) <u>Any</u> mental illness or condition that would normally	105
require psychiatric treatment, <u>psychological treatment, or other</u>	106
<u>mental health services, whether or not any person requested or</u>	107
<u>received psychiatric treatment, psychological treatment, or other</u>	108
<u>mental health services.</u>	109
(3) "Emergency medical services person" is the singular of	110
"emergency medical services personnel" as defined in section	111
2133.21 of the Revised Code.	112
(4) "Emergency facility person" is the singular of "emergency	113
facility personnel" as defined in section 2909.04 of the Revised	114
Code.	115
(5) "Public official" has the same meaning as in section	116
2921.01 of the Revised Code.	117
(6) <u>"Computer," "computer network," "computer program,"</u>	118
<u>"computer system," and "telecommunications device" have the same</u>	119
<u>meanings as in section 2913.01 of the Revised Code.</u>	120
(7) <u>"Post a message" means transferring, sending, posting,</u>	121
<u>publishing, disseminating, or otherwise communicating, or</u>	122
<u>attempting to transfer, send, post, publish, disseminate, or</u>	123
<u>otherwise communicate, any message or information, whether</u>	124
<u>truthful or untruthful, about an individual, and whether done</u>	125
<u>under one's own name, under the name of another, or while</u>	126
<u>impersonating another.</u>	127
(8) <u>"Third person" means, in relation to conduct as described</u>	128
<u>in division (A)(2) of this section, an individual who is neither</u>	129
<u>the offender nor the victim of the conduct.</u>	130
(E) <u>The state does not need to prove in a prosecution under</u>	131

this section 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 (D)(2)(b) of this section. 132  
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(F)(1) This section does not apply to a person solely because the person provided access or connection to or from an electronic method of remotely transferring information not under that person's control, including having provided capabilities that are incidental to providing 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. In addition, 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 it believes is, or will be sent, in violation of this section. 136  
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(2) Division (F)(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 this section except as otherwise provided by law. 150  
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(3) Division (F)(1) of this section does not apply to a person who conspires with a person actively involved in the creation or knowing distribution of material in violation of this section or who knowingly advertises the availability of material of that nature. 157  
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**Section 2.** That existing section 2903.211 of the Revised Code 162

is hereby repealed.