

**As Reported by the House Judiciary Committee**

**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**

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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  
system, shall post a message with purpose to urge or incite  
another to commit a violation of division (A)(1) of this section.

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(B) Whoever violates this section is guilty of menacing by  
stalking.

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

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

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

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

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

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

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

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victim or any other person. 47

(f) While committing the offense under 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) of this section does not apply in determining the penalty for a violation of division (A)(2) of this section. 48  
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(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. 53  
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(h) In committing the offense under division (A)(1) or (2) 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, a third person induced by the offender's posted message caused serious physical harm to that premises, that real property, or any personal property on that premises. 58  
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(i) Prior to committing the offense, the offender had been determined to represent a substantial risk of physical harm to others as manifested by evidence of then-recent homicidal or other violent behavior, evidence of then-recent threats that placed another in reasonable fear of violent behavior and serious physical harm, or other evidence of then-present dangerousness. 67  
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(3) If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing by stalking is either a 73  
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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 child placing 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 of the following: 102

(a) Any mental illness or condition that involves some 103  
temporary substantial incapacity ~~or~~; 104

(b) Any mental illness or condition that would normally 105  
require psychiatric treatment, psychological treatment, or other 106  
mental health services, whether or not any person requested or 107  
received psychiatric treatment, psychological treatment, or other 108

mental health services. 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) "Computer," "computer network," "computer program," 118  
"computer system," and "telecommunications device" have the same 119  
meanings as in section 2913.01 of the Revised Code. 120

(7) "Post a message" means transferring, sending, posting, 121  
publishing, disseminating, or otherwise communicating, or 122  
attempting to transfer, send, post, publish, disseminate, or 123  
otherwise communicate, any message or information, whether 124  
truthful or untruthful, about an individual, and whether done 125  
under one's own name, under the name of another, or while 126  
impersonating another. 127

(8) "Third person" means, in relation to conduct as described 128  
in division (A)(2) of this section, an individual who is neither 129  
the offender nor the victim of the conduct. 130

(E) The state does not need to prove in a prosecution under 131  
this section that a person requested or received psychiatric 132  
treatment, psychological treatment, or other mental health 133  
services in order to show that the person was caused mental 134  
distress as described in division (D)(2)(b) of this section. 135

(F)(1) This section does not apply to a person solely because 136  
the person provided access or connection to or from an electronic 137  
method of remotely transferring information not under that 138

person's control, including having provided capabilities that are 139  
incidental to providing access or connection to or from the 140  
electronic method of remotely transferring the information, and 141  
that do not include the creation of the content of the material 142  
that is the subject of the access or connection. In addition, any 143  
person providing access or connection to or from an electronic 144  
method of remotely transferring information not under that 145  
person's control shall not be liable for any action voluntarily 146  
taken in good faith to block the receipt or transmission through 147  
its service of any information that it believes is, or will be 148  
sent, in violation of this section. 149

(2) Division (F)(1) of this section does not create an 150  
affirmative duty for any person providing access or connection to 151  
or from an electronic method of remotely transferring information 152  
not under that person's control to block the receipt or 153  
transmission through its service of any information that it 154  
believes is, or will be sent, in violation of this section except 155  
as otherwise provided by law. 156

(3) Division (F)(1) of this section does not apply to a 157  
person who conspires with a person actively involved in the 158  
creation or knowing distribution of material in violation of this 159  
section or who knowingly advertises the availability of material 160  
of that nature. 161

**Section 2.** That existing section 2903.211 of the Revised Code 162  
is hereby repealed. 163