

As Reported by the House Judiciary Committee

125th General Assembly

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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**

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 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 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