

**As Reported by the House Criminal Justice Committee**

**129th General Assembly**

**Regular Session**

**2011-2012**

**Sub. H. B. No. 414**

**Representative Anielski**

**Cosponsors: Representatives Grossman, Patmon, Combs**

—

**A B I L L**

To amend sections 2903.211 and 2917.21 of the Revised 1  
Code to expand the offenses of menacing by 2  
stalking and telecommunications harassment and to 3  
prohibit a person from knowingly causing another 4  
person to believe that the offender will cause 5  
physical harm or mental or emotional distress to a 6  
member of the other person's immediate family. 7

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

**Section 1.** That sections 2903.211 and 2917.21 of the Revised 8  
Code be amended to read as follows: 9

**Sec. 2903.211.** (A)(1) No person by engaging in a pattern of 10  
conduct shall knowingly cause another person to believe that the 11  
offender will cause physical harm to the other person or a member 12  
of the other person's immediate family or cause mental distress or 13  
emotional distress to the other person or a member of the other 14  
person's immediate family. 15

(2) No person, through the use of any form of written 16  
communication or any electronic method of remotely transferring 17  
information, including, but not limited to, any computer, computer 18  
network, computer program, ~~or~~ computer system, or 19

telecommunications device shall post a message or use any 20  
intentionally written or verbal graphic gesture with purpose to 21  
urge do either of the following: 22

(a) Violate division (A)(1) of this section; 23

(b) Urge or incite another to commit a violation of division 24  
(A)(1) of this section. 25

(3) No person, with a sexual motivation, shall violate 26  
division (A)(1) or (2) of this section. 27

(B) Whoever violates this section is guilty of menacing by 28  
stalking. 29

(1) Except as otherwise provided in divisions (B)(2) and (3) 30  
of this section, menacing by stalking is a misdemeanor of the 31  
first degree. 32

(2) Menacing by stalking is a felony of the fourth degree if 33  
any of the following applies: 34

(a) The offender previously has been convicted of or pleaded 35  
guilty to a violation of this section or a violation of section 36  
2911.211 of the Revised Code. 37

(b) In committing the offense under division (A)(1), (2), or 38  
(3) of this section, the offender made a threat of physical harm 39  
to or against the victim, or as a result of an offense committed 40  
under division (A)(2) or (3) of this section, a third person 41  
induced by the offender's posted message made a threat of physical 42  
harm to or against the victim. 43

(c) In committing the offense under division (A)(1), (2), or 44  
(3) of this section, the offender trespassed on the land or 45  
premises where the victim lives, is employed, or attends school, 46  
or as a result of an offense committed under division (A)(2) or 47  
(3) of this section, a third person induced by the offender's 48  
posted message trespassed on the land or premises where the victim 49

lives, is employed, or attends school. 50

(d) The victim of the offense is a minor. 51

(e) The offender has a history of violence toward the victim 52  
or any other person or a history of other violent acts toward the 53  
victim or any other person. 54

(f) While committing the offense under division (A)(1) of 55  
this section or a violation of division (A)(3) of this section 56  
based on conduct in violation of division (A)(1) of this section, 57  
the offender had a deadly weapon on or about the offender's person 58  
or under the offender's control. Division (B)(2)(f) of this 59  
section does not apply in determining the penalty for a violation 60  
of division (A)(2) of this section or a violation of division 61  
(A)(3) of this section based on conduct in violation of division 62  
(A)(2) of this section. 63

(g) At the time of the commission of the offense, the 64  
offender was the subject of a protection order issued under 65  
section 2903.213 or 2903.214 of the Revised Code, regardless of 66  
whether the person to be protected under the order is the victim 67  
of the offense or another person. 68

(h) In committing the offense under division (A)(1), (2), or 69  
(3) of this section, the offender caused serious physical harm to 70  
the premises at which the victim resides, to the real property on 71  
which that premises is located, or to any personal property 72  
located on that premises, or, as a result of an offense committed 73  
under division (A)(2) of this section or an offense committed 74  
under division (A)(3) of this section based on a violation of 75  
division (A)(2) of this section, a third person induced by the 76  
offender's posted message caused serious physical harm to that 77  
premises, that real property, or any personal property on that 78  
premises. 79

(i) Prior to committing the offense, the offender had been 80

determined to represent a substantial risk of physical harm to 81  
others as manifested by evidence of then-recent homicidal or other 82  
violent behavior, evidence of then-recent threats that placed 83  
another in reasonable fear of violent behavior and serious 84  
physical harm, or other evidence of then-present dangerousness. 85

(3) If the victim of the offense is an officer or employee of 86  
a public children services agency or a private child placing 87  
agency and the offense relates to the officer's or employee's 88  
performance or anticipated performance of official 89  
responsibilities or duties, menacing by stalking is either a 90  
felony of the fifth degree or, if the offender previously has been 91  
convicted of or pleaded guilty to an offense of violence, the 92  
victim of that prior offense was an officer or employee of a 93  
public children services agency or private child placing agency, 94  
and that prior offense related to the officer's or employee's 95  
performance or anticipated performance of official 96  
responsibilities or duties, a felony of the fourth degree. 97

(C) Section 2919.271 of the Revised Code applies in relation 98  
to a defendant charged with a violation of this section. 99

(D) As used in this section: 100

(1) "Pattern of conduct" means two or more actions or 101  
incidents closely related in time, whether or not there has been a 102  
prior conviction based on any of those actions or incidents. 103  
Actions or incidents that prevent, obstruct, or delay the 104  
performance by a public official, firefighter, rescuer, emergency 105  
medical services person, or emergency facility person of any 106  
authorized act within the public official's, firefighter's, 107  
rescuer's, emergency medical services person's, or emergency 108  
facility person's official capacity, or the posting of messages or 109  
receipt of information or data through the use of an electronic 110  
method of remotely transferring information, including, but not 111  
limited to, a computer, computer network, computer program, 112

computer system, or telecommunications device, may constitute a	113
"pattern of conduct."	114
(2) "Mental distress" means any of the following:	115
(a) Any mental illness or condition that involves some	116
temporary substantial incapacity;	117
(b) Any mental illness or condition that would normally	118
require psychiatric treatment, psychological treatment, or other	119
mental health services, whether or not any person requested or	120
received psychiatric treatment, psychological treatment, or other	121
mental health services.	122
(3) "Emergency medical services person" is the singular of	123
"emergency medical services personnel" as defined in section	124
2133.21 of the Revised Code.	125
(4) "Emergency facility person" is the singular of "emergency	126
facility personnel" as defined in section 2909.04 of the Revised	127
Code.	128
(5) "Public official" has the same meaning as in section	129
2921.01 of the Revised Code.	130
(6) "Computer," "computer network," "computer program,"	131
"computer system," and "telecommunications device" have the same	132
meanings as in section 2913.01 of the Revised Code.	133
(7) "Post a message" means transferring, sending, posting,	134
publishing, disseminating, or otherwise communicating, or	135
attempting to transfer, send, post, publish, disseminate, or	136
otherwise communicate, any message or information, whether	137
truthful or untruthful, about an individual, and whether done	138
under one's own name, under the name of another, or while	139
impersonating another.	140
(8) "Third person" means, in relation to conduct as described	141
in division (A)(2) of this section, an individual who is neither	142

the offender nor the victim of the conduct. 143

(9) "Sexual motivation" has the same meaning as in section 144  
2971.01 of the Revised Code. 145

(10) "Emotional distress" means significant mental suffering 146  
or distress that may but does not necessarily require medical or 147  
other professional treatment or counseling. 148

(11) "Immediate family" means a spouse, parent, child, 149  
sibling, or other person who regularly resides in the household or 150  
who within the previous six months regularly resided in the 151  
household. 152

(E) The state does not need to prove in a prosecution under 153  
this section that a person requested or received psychiatric 154  
treatment, psychological treatment, or other mental health 155  
services in order to show that the person was caused mental 156  
distress as described in division (D)(2)(b) of this section. 157

(F)(1) This section does not apply to a person solely because 158  
the person provided access or connection to or from an electronic 159  
method of remotely transferring information not under that 160  
person's control, including having provided capabilities that are 161  
incidental to providing access or connection to or from the 162  
electronic method of remotely transferring the information, and 163  
that do not include the creation of the content of the material 164  
that is the subject of the access or connection. In addition, any 165  
person providing access or connection to or from an electronic 166  
method of remotely transferring information not under that 167  
person's control shall not be liable for any action voluntarily 168  
taken in good faith to block the receipt or transmission through 169  
its service of any information that it believes is, or will be 170  
sent, in violation of this section. 171

(2) Division (F)(1) of this section does not create an 172  
affirmative duty for any person providing access or connection to 173

or from an electronic method of remotely transferring information 174  
not under that person's control to block the receipt or 175  
transmission through its service of any information that it 176  
believes is, or will be sent, in violation of this section except 177  
as otherwise provided by law. 178

(3) Division (F)(1) of this section does not apply to a 179  
person who conspires with a person actively involved in the 180  
creation or knowing distribution of material in violation of this 181  
section or who knowingly advertises the availability of material 182  
of that nature. 183

**Sec. 2917.21.** (A) No person shall knowingly make or cause to 184  
be made a telecommunication, or knowingly permit a 185  
telecommunication to be made from a telecommunications device 186  
under the person's control, to another, if the caller does any of 187  
the following: 188

(1) ~~Fails to identify the caller to the recipient of the~~ 189  
~~telecommunication and makes~~ Makes the telecommunication with 190  
purpose to harass, intimidate, annoy, alarm, or abuse any person 191  
at the premises to which the telecommunication is made, whether or 192  
not actual communication takes place between the caller and a 193  
recipient; 194

(2) Describes, suggests, requests, or proposes that the 195  
caller, the recipient of the telecommunication, or any other 196  
person engage in sexual activity, and the recipient or another 197  
person at the premises to which the telecommunication is made has 198  
requested, in a previous telecommunication or in the immediate 199  
telecommunication, that the caller not make a telecommunication to 200  
the recipient or to the premises to which the telecommunication is 201  
made; 202

(3) During the telecommunication, violates section 2903.21 of 203  
the Revised Code; 204

(4) Knowingly states to the recipient of the 205  
telecommunication that the caller intends to cause damage to or 206  
destroy public or private property, and the recipient, any member 207  
of the recipient's family, or any other person who resides at the 208  
premises to which the telecommunication is made owns, leases, 209  
resides, or works in, will at the time of the destruction or 210  
damaging be near or in, has the responsibility of protecting, or 211  
insures the property that will be destroyed or damaged; 212

(5) Knowingly makes the telecommunication to the recipient of 213  
the telecommunication, to another person at the premises to which 214  
the telecommunication is made, or to those premises, and the 215  
recipient or another person at those premises previously has told 216  
the caller not to make a telecommunication to those premises or to 217  
any persons at those premises; 218

(6) Knowingly makes any comment, request, suggestion, or 219  
proposal to the recipient of the telecommunication that is 220  
threatening, intimidating, menacing, coercive, or obscene with the 221  
intent to abuse, threaten, annoy, alarm, or harass the recipient; 222

(7) Without a legitimate business purpose, knowingly 223  
interrupts the telecommunication service of any person; 224

(8) Without a legitimate business purpose, knowingly 225  
transmits to any person, regardless of whether the 226  
telecommunication is heard in its entirety, any file, document, or 227  
other communication that prevents that person from using the 228  
person's telephone service or electronic communication device; 229

(9) Knowingly makes any false statement concerning the death, 230  
injury, illness, disfigurement, reputation, indecent conduct, or 231  
criminal conduct of any person or any member of the person's 232  
family with purpose to abuse, threaten, intimidate, or harass the 233  
person; 234

(10) Makes the telecommunication for the purpose of harassing 235



another person who is under eighteen years of age, regardless of 236  
whether the person under eighteen years of age consents to the 237  
harassment; 238

(11) Urges or incites another person through a 239  
telecommunication or other means to harass or participate in the 240  
harassment of a person; 241

(12) Makes a telecommunication with purpose to harass, 242  
intimidate, or abuse any person at the premises to which the 243  
telecommunication is made, whether or not actual communication 244  
takes place between the caller and a recipient; 245

(13) Knowingly alarms the recipient by making a 246  
telecommunication at an hour or hours known to be inconvenient to 247  
the recipient, in an offensively or repetitive manner, or without 248  
a legitimate purpose. 249

(B)(1) No person shall make or cause to be made a 250  
telecommunication, or permit a telecommunication to be made from a 251  
telecommunications device under the person's control, with purpose 252  
to abuse, threaten, or harass another person. 253

(2) No person shall create and maintain an internet web site 254  
or web page that is accessible to one or more persons and that 255  
contains statements created for the purpose of abusing, 256  
threatening, or harassing another person. 257

(C)(1) Whoever violates this section is guilty of 258  
telecommunications harassment. 259

(2) A violation of division (A)(1), (2), (3), ~~or (5), (6),~~ 260  
(7), (8), (9), (10), (11), (12), or (13) or (B) of this section is 261  
a misdemeanor of the first degree on a first offense and a felony 262  
of the fifth degree on each subsequent offense. 263

(3) Except as otherwise provided in division (C)(3) of this 264  
section, a violation of division (A)(4) of this section is a 265

misdemeanor of the first degree on a first offense and a felony of 266  
the fifth degree on each subsequent offense. If a violation of 267  
division (A)(4) of this section results in economic harm of one 268  
thousand dollars or more but less than seven thousand five hundred 269  
dollars, telecommunications harassment is a felony of the fifth 270  
degree. If a violation of division (A)(4) of this section results 271  
in economic harm of seven thousand five hundred dollars or more 272  
but less than one hundred fifty thousand dollars, 273  
telecommunications harassment is a felony of the fourth degree. If 274  
a violation of division (A)(4) of this section results in economic 275  
harm of one hundred fifty thousand dollars or more, 276  
telecommunications harassment is a felony of the third degree. 277

(D) No cause of action may be asserted in any court of this 278  
state against any provider of a telecommunications service, 279  
interactive computer service as defined in section 230 of Title 47 280  
of the United States Code, or information service, or against any 281  
officer, employee, or agent of a telecommunication service, 282  
interactive computer service as defined in section 230 of Title 47 283  
of the United States Code, or information service, for any injury, 284  
death, or loss to person or property that allegedly arises out of 285  
the provider's, officer's, employee's, or agent's provision of 286  
information, facilities, or assistance in accordance with the 287  
terms of a court order that is issued in relation to the 288  
investigation or prosecution of an alleged violation of this 289  
section. A provider of a telecommunications service, interactive 290  
computer service as defined in section 230 of Title 47 of the 291  
United States Code, or information service, or an officer, 292  
employee, or agent of a telecommunications service, interactive 293  
computer service as defined in section 230 of Title 47 of the 294  
United States Code, or information service, is immune from any 295  
civil or criminal liability for injury, death, or loss to person 296  
or property that allegedly arises out of the provider's, 297  
officer's, employee's, or agent's provision of information, 298

facilities, or assistance in accordance with the terms of a court 299  
order that is issued in relation to the investigation or 300  
prosecution of an alleged violation of this section. 301

(E)(1) This section does not apply to a person solely because 302  
the person provided access or connection to or from an electronic 303  
method of remotely transferring information not under that 304  
person's control, including having provided capabilities that are 305  
incidental to providing access or connection to or from the 306  
electronic method of remotely transferring the information, and 307  
that do not include the creation of the content of the material 308  
that is the subject of the access or connection. In addition, any 309  
person providing access or connection to or from an electronic 310  
method of remotely transferring information not under that 311  
person's control shall not be liable for any action voluntarily 312  
taken in good faith to block the receipt or transmission through 313  
its service of any information that the person believes is, or 314  
will be sent, in violation of this section. 315

(2) Division (E)(1) of this section does not create an 316  
affirmative duty for any person providing access or connection to 317  
or from an electronic method of remotely transferring information 318  
not under that person's control to block the receipt or 319  
transmission through its service of any information that it 320  
believes is, or will be sent, in violation of this section except 321  
as otherwise provided by law. 322

(3) Division (E)(1) of this section does not apply to a 323  
person who conspires with a person actively involved in the 324  
creation or knowing distribution of material in violation of this 325  
section or who knowingly advertises the availability of material 326  
of that nature. 327

(4) A provider or user of an interactive computer service, as 328  
defined in section 230 of Title 47 of the United States Code, 329  
shall neither be treated as the publisher or speaker of any 330

information provided by another information content provider, as 331  
defined in section 230 of Title 47 of the United States Code, nor 332  
held civilly or criminally liable for the creation or development 333  
of information provided by another information content provider, 334  
as defined in section 230 of Title 47 of the United States Code. 335  
Nothing in this division shall be construed to protect a person 336  
from liability to the extent that the person developed or created 337  
any content in violation of this section. 338

(F) As used in this section: 339

(1) "Economic harm" means all direct, incidental, and 340  
consequential pecuniary harm suffered by a victim as a result of 341  
criminal conduct. "Economic harm" includes, but is not limited to, 342  
all of the following: 343

(a) All wages, salaries, or other compensation lost as a 344  
result of the criminal conduct; 345

(b) The cost of all wages, salaries, or other compensation 346  
paid to employees for time those employees are prevented from 347  
working as a result of the criminal conduct; 348

(c) The overhead costs incurred for the time that a business 349  
is shut down as a result of the criminal conduct; 350

(d) The loss of value to tangible or intangible property that 351  
was damaged as a result of the criminal conduct. 352

(2) "Caller" means the person described in division (A) of 353  
this section who makes or causes to be made a telecommunication or 354  
who permits a telecommunication to be made from a 355  
telecommunications device under that person's control. 356

(3) "Telecommunication" and "telecommunications device" have 357  
the same meanings as in section 2913.01 of the Revised Code. 358

(4) "Sexual activity" has the same meaning as in section 359  
2907.01 of the Revised Code. 360

~~(F)~~(G) Nothing in this section prohibits a person from making 361  
a telecommunication to a debtor that is in compliance with the 362  
"Fair Debt Collection Practices Act," 91 Stat. 874 (1977), 15 363  
U.S.C. 1692, as amended, or the "Telephone Consumer Protection 364  
Act," 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended. 365

**Section 2.** That existing sections 2903.211 and 2917.21 of the 366  
Revised Code are hereby repealed. 367