

As Reported by the Senate Judiciary Committee

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Sub. H. B. No. 414

Representative Anielski

Cosponsors: Representatives Grossman, Patmon, Combs, Antonio, Goyal,

Winburn

Senator Turner

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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 the Revised Code;	203 204
(4) Knowingly states to the recipient of the telecommunication that the caller intends to cause damage to or destroy public or private property, and the recipient, any member of the recipient's family, or any other person who resides at the premises to which the telecommunication is made owns, leases, resides, or works in, will at the time of the destruction or damaging be near or in, has the responsibility of protecting, or insures the property that will be destroyed or damaged;	205 206 207 208 209 210 211 212
(5) Knowingly makes the telecommunication to the recipient of the telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises;	213 214 215 216 217 218
<u>(6) Knowingly makes any comment, request, suggestion, or proposal to the recipient of the telecommunication that is threatening, intimidating, menacing, coercive, or obscene with the intent to abuse, threaten, annoy, alarm, or harass the recipient;</u>	219 220 221 222
<u>(7) Without a legitimate business purpose, knowingly interrupts the telecommunication service of any person;</u>	223 224
<u>(8) Without a legitimate business purpose, knowingly transmits to any person, regardless of whether the telecommunication is heard in its entirety, any file, document, or other communication that prevents that person from using the person's telephone service or electronic communication device;</u>	225 226 227 228 229
<u>(9) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of any person or any member of the person's</u>	230 231 232

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