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Representative Anielski

**Cosponsors: Representatives Hackett, Ruhl, Fedor, Driehaus, Sprague,
Gonzales, Buchy, Antonio, Grossman, Pillich, Butler, Baker, Barborak,
Barnes, Beck, Blair, Blessing, Boose, Brown, Burkley, Cera, Clyde, Conditt,
Green, Hagan, C., Hall, Hill, Landis, McClain, McGregor, Milkovich, Patmon,
Perales, Rogers, Sheehy, Smith, Terhar Speaker Batchelder**

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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 distress to a family or 6
household member of the other person. 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 family 12
or household member of the other person or cause mental distress 13
to the other person or a family or household member of the other 14
person. 15

(2) No person, through the use of any form of written communication or any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, ~~or~~ computer system, or telecommunications device shall post a message or use any intentionally written or verbal graphic gesture with purpose to urge do either of the following:

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

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

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

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

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

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

(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.

(b) In committing the offense under division (A)(1), (2), or (3) 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) or (3) of this section, a third person induced by the offender's posted message made a threat of physical harm to or against the victim.

(c) In committing the offense under division (A)(1), (2), or (3) of this section, the offender trespassed on the land or

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, 109
use of intentionally written or verbal graphic gestures, or 110
receipt of information or data through the use of any form of 111
written communication or an electronic method of remotely 112
transferring information, including, but not limited to, a 113
computer, computer network, computer program, computer system, or 114
telecommunications device, may constitute a "pattern of conduct." 115

(2) "Mental distress" means any of the following: 116

(a) Any mental illness or condition that involves some 117
temporary substantial incapacity; 118

(b) Any mental illness or condition that would normally 119
require psychiatric treatment, psychological treatment, or other 120
mental health services, whether or not any person requested or 121
received psychiatric treatment, psychological treatment, or other 122
mental health services. 123

(3) "Emergency medical services person" is the singular of 124
"emergency medical services personnel" as defined in section 125
2133.21 of the Revised Code. 126

(4) "Emergency facility person" is the singular of "emergency 127
facility personnel" as defined in section 2909.04 of the Revised 128
Code. 129

(5) "Public official" has the same meaning as in section 130
2921.01 of the Revised Code. 131

(6) "Computer," "computer network," "computer program," 132
"computer system," and "telecommunications device" have the same 133
meanings as in section 2913.01 of the Revised Code. 134

(7) "Post a message" means transferring, sending, posting, 135
publishing, disseminating, or otherwise communicating, or 136
attempting to transfer, send, post, publish, disseminate, or 137

otherwise communicate, any message or information, whether 138
truthful or untruthful, about an individual, and whether done 139
under one's own name, under the name of another, or while 140
impersonating another. 141

(8) "Third person" means, in relation to conduct as described 142
in division (A)(2) of this section, an individual who is neither 143
the offender nor the victim of the conduct. 144

(9) "Sexual motivation" has the same meaning as in section 145
2971.01 of the Revised Code. 146

(10) "Family or household member" means any of the following: 147

(a) Any of the following who is residing or has resided with 148
the person against whom the act prohibited in division (A)(1) of 149
this section is committed: 150

(i) A spouse, a person living as a spouse, or a former spouse 151
of the person; 152

(ii) A parent, a foster parent, or a child of the person, or 153
another person related by consanguinity or affinity to the person; 154

(iii) A parent or a child of a spouse, person living as a 155
spouse, or former spouse of the person, or another person related 156
by consanguinity or affinity to a spouse, person living as a 157
spouse, or former spouse of the person. 158

(b) The natural parent of any child of whom the person 159
against whom the act prohibited in division (A)(1) of this section 160
is committed is the other natural parent or is the putative other 161
natural parent. 162

(11) "Person living as a spouse" means a person who is living 163
or has lived with the person against whom the act prohibited in 164
division (A)(1) of this section is committed in a common law 165
marital relationship, who otherwise is cohabiting with that 166
person, or who otherwise has cohabited with the person within five 167

years prior to the date of the alleged commission of the act in 168
question. 169

(E) The state does not need to prove in a prosecution under 170
this section that a person requested or received psychiatric 171
treatment, psychological treatment, or other mental health 172
services in order to show that the person was caused mental 173
distress as described in division (D)(2)(b) of this section. 174

(F)(1) This section does not apply to a person solely because 175
the person provided access or connection to or from an electronic 176
method of remotely transferring information not under that 177
person's control, including having provided capabilities that are 178
incidental to providing access or connection to or from the 179
electronic method of remotely transferring the information, and 180
that do not include the creation of the content of the material 181
that is the subject of the access or connection. In addition, any 182
person providing access or connection to or from an electronic 183
method of remotely transferring information not under that 184
person's control shall not be liable for any action voluntarily 185
taken in good faith to block the receipt or transmission through 186
its service of any information that it believes is, or will be 187
sent, in violation of this section. 188

(2) Division (F)(1) of this section does not create an 189
affirmative duty for any person providing access or connection to 190
or from an electronic method of remotely transferring information 191
not under that person's control to block the receipt or 192
transmission through its service of any information that it 193
believes is, or will be sent, in violation of this section except 194
as otherwise provided by law. 195

(3) Division (F)(1) of this section does not apply to a 196
person who conspires with a person actively involved in the 197
creation or knowing distribution of material in violation of this 198
section or who knowingly advertises the availability of material 199

of that nature. 200

Sec. 2917.21. (A) No person shall knowingly make or cause to 201
be made a telecommunication, or knowingly permit a 202
telecommunication to be made from a telecommunications device 203
under the person's control, to another, if the caller does any of 204
the following: 205

(1) ~~Fails to identify the caller to the recipient of the~~ 206
~~telecommunication and makes~~ Makes the telecommunication with 207
purpose to harass, intimidate, or abuse any person at the premises 208
to which the telecommunication is made, whether or not actual 209
communication takes place between the caller and a recipient; 210

(2) Describes, suggests, requests, or proposes that the 211
caller, the recipient of the telecommunication, or any other 212
person engage in sexual activity, and the recipient or another 213
person at the premises to which the telecommunication is made has 214
requested, in a previous telecommunication or in the immediate 215
telecommunication, that the caller not make a telecommunication to 216
the recipient or to the premises to which the telecommunication is 217
made; 218

(3) During the telecommunication, violates section 2903.21 of 219
the Revised Code; 220

(4) Knowingly states to the recipient of the 221
telecommunication that the caller intends to cause damage to or 222
destroy public or private property, and the recipient, any member 223
of the recipient's family, or any other person who resides at the 224
premises to which the telecommunication is made owns, leases, 225
resides, or works in, will at the time of the destruction or 226
damaging be near or in, has the responsibility of protecting, or 227
insures the property that will be destroyed or damaged; 228

(5) Knowingly makes the telecommunication to the recipient of 229

the telecommunication, to another person at the premises to which 230
the telecommunication is made, or to those premises, and the 231
recipient or another person at those premises previously has told 232
the caller not to make a telecommunication to those premises or to 233
any persons at those premises; 234

(6) Knowingly makes any comment, request, suggestion, or 235
proposal to the recipient of the telecommunication that is 236
threatening, intimidating, menacing, coercive, or obscene with the 237
intent to abuse, threaten, or harass the recipient; 238

(7) Without a legitimate business purpose, knowingly 239
interrupts the telecommunication service of any person; 240

(8) Without a legitimate business purpose, knowingly 241
transmits to any person, regardless of whether the 242
telecommunication is heard in its entirety, any file, document, or 243
other communication that prevents that person from using the 244
person's telephone service or electronic communication device; 245

(9) Knowingly makes any false statement concerning the death, 246
injury, illness, disfigurement, reputation, indecent conduct, or 247
criminal conduct of the recipient of the telecommunication or 248
family or household member of the recipient with purpose to abuse, 249
threaten, intimidate, or harass the recipient; 250

(10) Incites another person through a telecommunication or 251
other means to harass or participate in the harassment of a 252
person; 253

(11) Knowingly alarms the recipient by making a 254
telecommunication at an hour or hours known to be inconvenient to 255
the recipient, in an offensively or repetitive manner, or without 256
a legitimate purpose. 257

(B)(1) No person shall make or cause to be made a 258
telecommunication, or permit a telecommunication to be made from a 259
telecommunications device under the person's control, with purpose 260

to abuse, threaten, or harass another person. 261

(2) No person shall knowingly post a text or audio statement 262
or an image on an internet web site or web page for the purpose of 263
abusing, threatening, or harassing another person. 264

(C)(1) Whoever violates this section is guilty of 265
telecommunications harassment. 266

(2) A violation of division (A)(1), (2), (3), ~~or (5)~~, (6), 267
(7), (8), (9), (10), or (11) or (B) of this section is a 268
misdemeanor of the first degree on a first offense and a felony of 269
the fifth degree on each subsequent offense. 270

(3) Except as otherwise provided in division (C)(3) of this 271
section, a violation of division (A)(4) of this section is a 272
misdemeanor of the first degree on a first offense and a felony of 273
the fifth degree on each subsequent offense. If a violation of 274
division (A)(4) of this section results in economic harm of one 275
thousand dollars or more but less than seven thousand five hundred 276
dollars, telecommunications harassment is a felony of the fifth 277
degree. If a violation of division (A)(4) of this section results 278
in economic harm of seven thousand five hundred dollars or more 279
but less than one hundred fifty thousand dollars, 280
telecommunications harassment is a felony of the fourth degree. If 281
a violation of division (A)(4) of this section results in economic 282
harm of one hundred fifty thousand dollars or more, 283
telecommunications harassment is a felony of the third degree. 284

(D) No cause of action may be asserted in any court of this 285
state against any provider of a telecommunications service, 286
interactive computer service as defined in section 230 of Title 47 287
of the United States Code, or information service, or against any 288
officer, employee, or agent of a telecommunication service, 289
interactive computer service as defined in section 230 of Title 47 290
of the United States Code, or information service, for any injury, 291

death, or loss to person or property that allegedly arises out of 292
the provider's, officer's, employee's, or agent's provision of 293
information, facilities, or assistance in accordance with the 294
terms of a court order that is issued in relation to the 295
investigation or prosecution of an alleged violation of this 296
section. A provider of a telecommunications service, interactive 297
computer service as defined in section 230 of Title 47 of the 298
United States Code, or information service, or an officer, 299
employee, or agent of a telecommunications service, interactive 300
computer service as defined in section 230 of Title 47 of the 301
United States Code, or information service, is immune from any 302
civil or criminal liability for injury, death, or loss to person 303
or property that allegedly arises out of the provider's, 304
officer's, employee's, or agent's provision of information, 305
facilities, or assistance in accordance with the terms of a court 306
order that is issued in relation to the investigation or 307
prosecution of an alleged violation of this section. 308

(E)(1) This section does not apply to a person solely because 309
the person provided access or connection to or from an electronic 310
method of remotely transferring information not under that 311
person's control, including having provided capabilities that are 312
incidental to providing access or connection to or from the 313
electronic method of remotely transferring the information, and 314
that do not include the creation of the content of the material 315
that is the subject of the access or connection. In addition, any 316
person providing access or connection to or from an electronic 317
method of remotely transferring information not under that 318
person's control shall not be liable for any action voluntarily 319
taken in good faith to block the receipt or transmission through 320
its service of any information that the person believes is, or 321
will be sent, in violation of this section. 322

(2) Division (E)(1) of this section does not create an 323

affirmative duty for any person providing access or connection to 324
or from an electronic method of remotely transferring information 325
not under that person's control to block the receipt or 326
transmission through its service of any information that it 327
believes is, or will be sent, in violation of this section except 328
as otherwise provided by law. 329

(3) Division (E)(1) of this section does not apply to a 330
person who conspires with a person actively involved in the 331
creation or knowing distribution of material in violation of this 332
section or who knowingly advertises the availability of material 333
of that nature. 334

(4) A provider or user of an interactive computer service, as 335
defined in section 230 of Title 47 of the United States Code, 336
shall neither be treated as the publisher or speaker of any 337
information provided by another information content provider, as 338
defined in section 230 of Title 47 of the United States Code, nor 339
held civilly or criminally liable for the creation or development 340
of information provided by another information content provider, 341
as defined in section 230 of Title 47 of the United States Code. 342
Nothing in this division shall be construed to protect a person 343
from liability to the extent that the person developed or created 344
any content in violation of this section. 345

(F) As used in this section: 346

(1) "Economic harm" means all direct, incidental, and 347
consequential pecuniary harm suffered by a victim as a result of 348
criminal conduct. "Economic harm" includes, but is not limited to, 349
all of the following: 350

(a) All wages, salaries, or other compensation lost as a 351
result of the criminal conduct; 352

(b) The cost of all wages, salaries, or other compensation 353
paid to employees for time those employees are prevented from 354

working as a result of the criminal conduct; 355

(c) The overhead costs incurred for the time that a business 356
is shut down as a result of the criminal conduct; 357

(d) The loss of value to tangible or intangible property that 358
was damaged as a result of the criminal conduct. 359

(2) "Caller" means the person described in division (A) of 360
this section who makes or causes to be made a telecommunication or 361
who permits a telecommunication to be made from a 362
telecommunications device under that person's control. 363

(3) "Telecommunication" and "telecommunications device" have 364
the same meanings as in section 2913.01 of the Revised Code. 365

(4) "Sexual activity" has the same meaning as in section 366
2907.01 of the Revised Code. 367

~~(F)~~(5) "Family or household member" means any of the 368
following: 369

(a) Any of the following who is residing or has resided with 370
the recipient of the telecommunication against whom the act 371
prohibited in division (A)(9) of this section is committed: 372

(i) A spouse, a person living as a spouse, or a former spouse 373
of the recipient; 374

(ii) A parent, a foster parent, or a child of the recipient, 375
or another person related by consanguinity or affinity to the 376
recipient; 377

(iii) A parent or a child of a spouse, person living as a 378
spouse, or former spouse of the recipient, or another person 379
related by consanguinity or affinity to a spouse, person living as 380
a spouse, or former spouse of the recipient. 381

(b) The natural parent of any child of whom the recipient of 382
the telecommunication against whom the act prohibited in division 383
(A)(9) of this section is committed is the other natural parent or 384

is the putative other natural parent. 385

(6) "Person living as a spouse" means a person who is living 386
or has lived with the recipient of the telecommunication against 387
whom the act prohibited in division (A)(9) of this section is 388
committed in a common law marital relationship, who otherwise is 389
cohabiting with the recipient, or who otherwise has cohabited with 390
the recipient within five years prior to the date of the alleged 391
commission of the act in question. 392

(G) Nothing in this section prohibits a person from making a 393
telecommunication to a debtor that is in compliance with the "Fair 394
Debt Collection Practices Act," 91 Stat. 874 (1977), 15 U.S.C. 395
1692, as amended, or the "Telephone Consumer Protection Act," 105 396
Stat. 2395 (1991), 47 U.S.C. 227, as amended. 397

Section 2. That existing sections 2903.211 and 2917.21 of the 398
Revised Code are hereby repealed. 399