

**As Reported by the House Judiciary Committee**

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**Sub. H. B. No. 74**

**Representative Anielski**

**Cosponsors: Representatives Hackett, Ruhl, Fedor, Driehaus, Sprague,  
Gonzales, Buchy, Antonio, Grossman, Pillich, Butler**

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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 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, 109  
use of intentionally written or verbal graphic gestures, or 110  
receipt of information or data through the use of any form of 111

|   |     |
|---|-----|
| <u>written communication or an electronic method of remotely</u>  | 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