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Representative Anielski

Cosponsors: Representatives Grossman, LaTourette, Kraus, Dever, Blessing, Rogers, Brown, Butler, Antonio, Arndt, Ashford, Baker, Boose, Conditt, Cupp, Driehaus, Duffey, Ginter, Hambley, Hayes, Howse, Johnson, T., Koehler, Kunze, Landis, Leland, Manning, McClain, O'Brien, M., O'Brien, S., Patterson, Pelanda, Retherford, Schaffer, Scherer, Sears, Sheehy, Slaby, Smith, K., Sprague, Sweeney, Young, Speaker Rosenberger

Senators Eklund, Burke, Cafaro, Coley, Hackett, Hite, Hughes, LaRose, Lehner, Manning, Oelslager, Patton, Schiavoni, Tavares, Thomas, Uecker, Williams

A BILL

To amend sections 2903.211 and 2917.21 of the 1
Revised Code to expand the offenses of menacing 2
by stalking and telecommunications harassment 3
and to prohibit a person from knowingly causing 4
another person to believe that the offender will 5
cause physical harm or mental distress to a 6
family or 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 8
Revised Code be amended to read as follows: 9
Sec. 2903.211. (A) (1) No person by engaging in a pattern 10
of conduct shall knowingly cause another person to believe that 11
the offender will cause physical harm to the other person or a 12
family or household member of the other person or cause mental 13

distress to the other person or a family or household member of 14
the other person. In addition to any other basis for the other 15
person's belief that the offender will cause physical harm to 16
the other person or the other person's family or household 17
member or mental distress to the other person or the other 18
person's ~~mental distress~~ family or household member, the other 19
person's belief or mental distress may be based on words or 20
conduct of the offender that are directed at or identify a 21
corporation, association, or other organization that employs the 22
other person or to which the other person belongs. 23

(2) No person, through the use of any form of written 24
communication or any electronic method of remotely transferring 25
information, including, but not limited to, any computer, 26
computer network, computer program, ~~or~~ computer system, or 27
telecommunication device shall post a message or use any 28
intentionally written or verbal graphic gesture with purpose to 29
~~urge~~ do either of the following: 30

(a) Violate division (A) (1) of this section; 31

(b) Urge or incite another to commit a violation of 32
division (A) (1) of this section. 33

(3) No person, with a sexual motivation, shall violate 34
division (A) (1) or (2) of this section. 35

(B) Whoever violates this section is guilty of menacing by 36
stalking. 37

(1) Except as otherwise provided in divisions (B) (2) and 38
(3) of this section, menacing by stalking is a misdemeanor of 39
the first degree. 40

(2) Menacing by stalking is a felony of the fourth degree 41
if any of the following applies: 42

(a) The offender previously has been convicted of or 43
pleaded guilty to a violation of this section or a violation of 44
section 2911.211 of the Revised Code. 45

(b) In committing the offense under division (A) (1), (2), 46
or (3) of this section, the offender made a threat of physical 47
harm to or against the victim, or as a result of an offense 48
committed under division (A) (2) or (3) of this section, a third 49
person induced by the offender's posted message made a threat of 50
physical harm to or against the victim. 51

(c) In committing the offense under division (A) (1), (2), 52
or (3) of this section, the offender trespassed on the land or 53
premises where the victim lives, is employed, or attends school, 54
or as a result of an offense committed under division (A) (2) or 55
(3) of this section, a third person induced by the offender's 56
posted message trespassed on the land or premises where the 57
victim lives, is employed, or attends school. 58

(d) The victim of the offense is a minor. 59

(e) The offender has a history of violence toward the 60
victim or any other person or a history of other violent acts 61
toward the victim or any other person. 62

(f) While committing the offense under division (A) (1) of 63
this section or a violation of division (A) (3) of this section 64
based on conduct in violation of division (A) (1) of this 65
section, the offender had a deadly weapon on or about the 66
offender's person or under the offender's control. Division (B) 67
(2) (f) of this section does not apply in determining the penalty 68
for a violation of division (A) (2) of this section or a 69
violation of division (A) (3) of this section based on conduct in 70
violation of division (A) (2) of this section. 71

(g) At the time of the commission of the offense, the 72
offender was the subject of a protection order issued under 73
section 2903.213 or 2903.214 of the Revised Code, regardless of 74
whether the person to be protected under the order is the victim 75
of the offense or another person. 76

(h) In committing the offense under division (A) (1), (2), 77
or (3) of this section, the offender caused serious physical 78
harm to the premises at which the victim resides, to the real 79
property on which that premises is located, or to any personal 80
property located on that premises, or, as a result of an offense 81
committed under division (A) (2) of this section or an offense 82
committed under division (A) (3) of this section based on a 83
violation of division (A) (2) of this section, a third person 84
induced by the offender's posted message caused serious physical 85
harm to that premises, that real property, or any personal 86
property on that premises. 87

(i) Prior to committing the offense, the offender had been 88
determined to represent a substantial risk of physical harm to 89
others as manifested by evidence of then-recent homicidal or 90
other violent behavior, evidence of then-recent threats that 91
placed another in reasonable fear of violent behavior and 92
serious physical harm, or other evidence of then-present 93
dangerousness. 94

(3) If the victim of the offense is an officer or employee 95
of a public children services agency or a private child placing 96
agency and the offense relates to the officer's or employee's 97
performance or anticipated performance of official 98
responsibilities or duties, menacing by stalking is either a 99
felony of the fifth degree or, if the offender previously has 100
been convicted of or pleaded guilty to an offense of violence, 101

the victim of that prior offense was an officer or employee of a 102
public children services agency or private child placing agency, 103
and that prior offense related to the officer's or employee's 104
performance or anticipated performance of official 105
responsibilities or duties, a felony of the fourth degree. 106

(C) Section 2919.271 of the Revised Code applies in 107
relation to a defendant charged with a violation of this 108
section. 109

(D) As used in this section: 110

(1) "Pattern of conduct" means two or more actions or 111
incidents closely related in time, whether or not there has been 112
a prior conviction based on any of those actions or incidents, 113
or two or more actions or incidents closely related in time, 114
whether or not there has been a prior conviction based on any of 115
those actions or incidents, directed at one or more persons 116
employed by or belonging to the same corporation, association, 117
or other organization. Actions or incidents that prevent, 118
obstruct, or delay the performance by a public official, 119
firefighter, rescuer, emergency medical services person, or 120
emergency facility person of any authorized act within the 121
public official's, firefighter's, rescuer's, emergency medical 122
services person's, or emergency facility person's official 123
capacity, or the posting of messages, use of intentionally 124
written or verbal graphic gestures, or receipt of information or 125
data through the use of any form of written communication or an 126
electronic method of remotely transferring information, 127
including, but not limited to, a computer, computer network, 128
computer program, computer system, or telecommunications device, 129
may constitute a "pattern of conduct." 130

(2) "Mental distress" means any of the following: 131

(a) Any mental illness or condition that involves some temporary substantial incapacity;	132 133
(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.	134 135 136 137 138
(3) "Emergency medical services person" is the singular of "emergency medical services personnel" as defined in section 2133.21 of the Revised Code.	139 140 141
(4) "Emergency facility person" is the singular of "emergency facility personnel" as defined in section 2909.04 of the Revised Code.	142 143 144
(5) "Public official" has the same meaning as in section 2921.01 of the Revised Code.	145 146
(6) "Computer," "computer network," "computer program," "computer system," and "telecommunications device" have the same meanings as in section 2913.01 of the Revised Code.	147 148 149
(7) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating, or attempting to transfer, send, post, publish, disseminate, or otherwise communicate, any message or information, whether truthful or untruthful, about an individual, and whether done under one's own name, under the name of another, or while impersonating another.	150 151 152 153 154 155 156
(8) "Third person" means, in relation to conduct as described in division (A) (2) of this section, an individual who is neither the offender nor the victim of the conduct.	157 158 159

(9) "Sexual motivation" has the same meaning as in section 2971.01 of the Revised Code. 160
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(10) "Organization" includes an entity that is a governmental employer. 162
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(11) "Family or household member" means any of the following: 164
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(a) Any of the following who is residing or has resided with the person against whom the act prohibited in division (A)(1) of this section is committed: 166
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(i) A spouse, a person living as a spouse, or a former spouse of the person; 169
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(ii) A parent, a foster parent, or a child of the person, or another person related by consanguinity or affinity to the person; 171
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(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the person, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the person. 174
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(b) The natural parent of any child of whom the person against whom the act prohibited in division (A)(1) of this section is committed is the other natural parent or is the putative other natural parent. 178
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(12) "Person living as a spouse" means a person who is living or has lived with the person against whom the act prohibited in division (A)(1) of this section is committed in a common law marital relationship, who otherwise is cohabiting with that person, or who otherwise has cohabited with the person within five years prior to the date of the alleged commission of 182
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the act in question. 188

(E) The state does not need to prove in a prosecution 189
under this section that a person requested or received 190
psychiatric treatment, psychological treatment, or other mental 191
health services in order to show that the person was caused 192
mental distress as described in division (D) (2) (b) of this 193
section. 194

(F) (1) This section does not apply to a person solely 195
because the person provided access or connection to or from an 196
electronic method of remotely transferring information not under 197
that person's control, including having provided capabilities 198
that are incidental to providing access or connection to or from 199
the electronic method of remotely transferring the information, 200
and that do not include the creation of the content of the 201
material that is the subject of the access or connection. In 202
addition, any person providing access or connection to or from 203
an electronic method of remotely transferring information not 204
under that person's control shall not be liable for any action 205
voluntarily taken in good faith to block the receipt or 206
transmission through its service of any information that it 207
believes is, or will be sent, in violation of this section. 208

(2) Division (F) (1) of this section does not create an 209
affirmative duty for any person providing access or connection 210
to or from an electronic method of remotely transferring 211
information not under that person's control to block the receipt 212
or transmission through its service of any information that it 213
believes is, or will be sent, in violation of this section 214
except as otherwise provided by law. 215

(3) Division (F) (1) of this section does not apply to a 216
person who conspires with a person actively involved in the 217

creation or knowing distribution of material in violation of 218
this section or who knowingly advertises the availability of 219
material of that nature. 220

Sec. 2917.21. (A) No person shall knowingly make or cause 221
to be made a telecommunication, or knowingly permit a 222
telecommunication to be made from a telecommunications device 223
under the person's control, to another, if the caller does any 224
of the following: 225

(1) ~~Fails to identify the caller to the recipient of the~~ 226
~~telecommunication and makes~~ Makes the telecommunication with 227
purpose to harass, intimidate, or abuse any person at the 228
premises to which the telecommunication is made, whether or not 229
actual communication takes place between the caller and a 230
recipient; 231

(2) Describes, suggests, requests, or proposes that the 232
caller, the recipient of the telecommunication, or any other 233
person engage in sexual activity, and the recipient or another 234
person at the premises to which the telecommunication is made 235
has requested, in a previous telecommunication or in the 236
immediate telecommunication, that the caller not make a 237
telecommunication to the recipient or to the premises to which 238
the telecommunication is made; 239

(3) During the telecommunication, violates section 2903.21 240
of the Revised Code; 241

(4) Knowingly states to the recipient of the 242
telecommunication that the caller intends to cause damage to or 243
destroy public or private property, and the recipient, any 244
member of the recipient's family, or any other person who 245
resides at the premises to which the telecommunication is made 246

owns, leases, resides, or works in, will at the time of the 247
destruction or damaging be near or in, has the responsibility of 248
protecting, or insures the property that will be destroyed or 249
damaged; 250

(5) Knowingly makes the telecommunication to the recipient 251
of the telecommunication, to another person at the premises to 252
which the telecommunication is made, or to those premises, and 253
the recipient or another person at those premises previously has 254
told the caller not to make a telecommunication to those 255
premises or to any persons at those premises; 256

(6) Knowingly makes any comment, request, suggestion, or 257
proposal to the recipient of the telecommunication that is 258
threatening, intimidating, menacing, coercive, or obscene with 259
the intent to abuse, threaten, or harass the recipient; 260

(7) Without a lawful business purpose, knowingly 261
interrupts the telecommunication service of any person; 262

(8) Without a lawful business purpose, knowingly transmits 263
to any person, regardless of whether the telecommunication is 264
heard in its entirety, any file, document, or other 265
communication that prevents that person from using the person's 266
telephone service or electronic communication device; 267

(9) Knowingly makes any false statement concerning the 268
death, injury, illness, disfigurement, reputation, indecent 269
conduct, or criminal conduct of the recipient of the 270
telecommunication or family or household member of the recipient 271
with purpose to abuse, threaten, intimidate, or harass the 272
recipient; 273

(10) Knowingly incites another person through a 274
telecommunication or other means to harass or participate in the 275

<u>harassment of a person;</u>	276
<u>(11) Knowingly alarms the recipient by making a</u>	277
<u>telecommunication without a lawful purpose at an hour or hours</u>	278
<u>known to be inconvenient to the recipient and in an offensive or</u>	279
<u>repetitive manner.</u>	280
(B) <u>(1)</u> No person shall make or cause to be made a	281
telecommunication, or permit a telecommunication to be made from	282
a telecommunications device under the person's control, with	283
purpose to abuse, threaten, or harass another person.	284
<u>(2) No person shall knowingly post a text or audio</u>	285
<u>statement or an image on an internet web site or web page for</u>	286
<u>the purpose of abusing, threatening, or harassing another</u>	287
<u>person.</u>	288
(C) (1) Whoever violates this section is guilty of	289
telecommunications harassment.	290
(2) A violation of division (A) (1), (2), (3), or (5), <u>(6),</u>	291
<u>(7), (8), (9), (10), or (11)</u> or (B) of this section is a	292
misdemeanor of the first degree on a first offense and a felony	293
of the fifth degree on each subsequent offense.	294
(3) Except as otherwise provided in division (C) (3) of	295
this section, a violation of division (A) (4) of this section is	296
a misdemeanor of the first degree on a first offense and a	297
felony of the fifth degree on each subsequent offense. If a	298
violation of division (A) (4) of this section results in economic	299
harm of one thousand dollars or more but less than seven	300
thousand five hundred dollars, telecommunications harassment is	301
a felony of the fifth degree. If a violation of division (A) (4)	302
of this section results in economic harm of seven thousand five	303
hundred dollars or more but less than one hundred fifty thousand	304

dollars, telecommunications harassment is a felony of the fourth 305
degree. If a violation of division (A) (4) of this section 306
results in economic harm of one hundred fifty thousand dollars 307
or more, telecommunications harassment is a felony of the third 308
degree. 309

(D) No cause of action may be asserted in any court of 310
this state against any provider of a telecommunications service, 311
interactive computer service as defined in section 230 of Title 312
47 of the United States Code, or information service, or against 313
any officer, employee, or agent of a telecommunication service, 314
interactive computer service as defined in section 230 of Title 315
47 of the United States Code, or information service, for any 316
injury, death, or loss to person or property that allegedly 317
arises out of the provider's, officer's, employee's, or agent's 318
provision of information, facilities, or assistance in 319
accordance with the terms of a court order that is issued in 320
relation to the investigation or prosecution of an alleged 321
violation of this section. A provider of a telecommunications 322
service, interactive computer service as defined in section 230 323
of Title 47 of the United States Code, or information service, 324
or an officer, employee, or agent of a telecommunications 325
service, interactive computer service as defined in section 230 326
of Title 47 of the United States Code, or information service, 327
is immune from any civil or criminal liability for injury, 328
death, or loss to person or property that allegedly arises out 329
of the provider's, officer's, employee's, or agent's provision 330
of information, facilities, or assistance in accordance with the 331
terms of a court order that is issued in relation to the 332
investigation or prosecution of an alleged violation of this 333
section. 334

(E) (1) This section does not apply to a person solely 335

because the person provided access or connection to or from an 336
electronic method of remotely transferring information not under 337
that person's control, including having provided capabilities 338
that are incidental to providing access or connection to or from 339
the electronic method of remotely transferring the information, 340
and that do not include the creation of the content of the 341
material that is the subject of the access or connection. In 342
addition, any person providing access or connection to or from 343
an electronic method of remotely transferring information not 344
under that person's control shall not be liable for any action 345
voluntarily taken in good faith to block the receipt or 346
transmission through its service of any information that the 347
person believes is, or will be sent, in violation of this 348
section. 349

(2) Division (E) (1) of this section does not create an 350
affirmative duty for any person providing access or connection 351
to or from an electronic method of remotely transferring 352
information not under that person's control to block the receipt 353
or transmission through its service of any information that it 354
believes is, or will be sent, in violation of this section 355
except as otherwise provided by law. 356

(3) Division (E) (1) of this section does not apply to a 357
person who conspires with a person actively involved in the 358
creation or knowing distribution of material in violation of 359
this section or who knowingly advertises the availability of 360
material of that nature. 361

(4) A provider or user of an interactive computer service, 362
as defined in section 230 of Title 47 of the United States Code, 363
shall neither be treated as the publisher or speaker of any 364
information provided by another information content provider, as 365

defined in section 230 of Title 47 of the United States Code, 366
nor held civilly or criminally liable for the creation or 367
development of information provided by another information 368
content provider, as defined in section 230 of Title 47 of the 369
United States Code. Nothing in this division shall be construed 370
to protect a person from liability to the extent that the person 371
developed or created any content in violation of this section. 372

(F) Divisions (A) (5) to (11) and (B) (2) of this section do 373
not apply to a person who, while employed or contracted by a 374
newspaper, magazine, press association, news agency, news wire 375
service, cable channel or cable operator, or radio or television 376
station, is gathering, processing, transmitting, compiling, 377
editing, or disseminating information for the general public 378
within the scope of the person's employment in that capacity or 379
the person's contractual authority in that capacity. 380

(G) As used in this section: 381

(1) "Economic harm" means all direct, incidental, and 382
consequential pecuniary harm suffered by a victim as a result of 383
criminal conduct. "Economic harm" includes, but is not limited 384
to, all of the following: 385

(a) All wages, salaries, or other compensation lost as a 386
result of the criminal conduct; 387

(b) The cost of all wages, salaries, or other compensation 388
paid to employees for time those employees are prevented from 389
working as a result of the criminal conduct; 390

(c) The overhead costs incurred for the time that a 391
business is shut down as a result of the criminal conduct; 392

(d) The loss of value to tangible or intangible property 393
that was damaged as a result of the criminal conduct. 394

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

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

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

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

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

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

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

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

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

(6) "Person living as a spouse" means a person who is

living or has lived with the recipient of the telecommunication 423
against whom the act prohibited in division (A) (9) of this 424
section is committed in a common law marital relationship, who 425
otherwise is cohabiting with the recipient, or who otherwise has 426
cohabited with the recipient within five years prior to the date 427
of the alleged commission of the act in question. 428

(7) "Cable operator" has the same meaning as in section 429
1332.21 of the Revised Code. 430

(H) Nothing in this section prohibits a person from making 431
a telecommunication to a debtor that is in compliance with the 432
"Fair Debt Collection Practices Act," 91 Stat. 874 (1977), 15 433
U.S.C. 1692, as amended, or the "Telephone Consumer Protection 434
Act," 105 Stat. 2395 (1991), 47 U.S.C. 227, as amended. 435

Section 2. That existing sections 2903.211 and 2917.21 of 436
the Revised Code are hereby repealed. 437