

# AN ACT

To amend sections 2903.211 and 2917.21 of the Revised Code to expand the offenses of menacing by stalking and telecommunications harassment and to prohibit a person from knowingly causing another person to believe that the offender will cause physical harm or mental distress to a family or household member of the other person.

*Be it enacted by the General Assembly of the State of Ohio:*

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

**Sec. 2903.211.** (A)(1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's ~~mental distress~~ family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(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 telecommunication 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, 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 trespassed on the land or premises where the victim lives, is employed, or attends school.

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

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

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

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

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

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

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

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

(D) As used in this section:

(1) "Pattern of conduct" means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or

more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. Actions or incidents that prevent, obstruct, or delay the performance by a public official, firefighter, rescuer, emergency medical services person, or emergency facility person of any authorized act within the public official's, firefighter's, rescuer's, emergency medical services person's, or emergency facility person's official capacity, or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

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

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

(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.

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

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

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

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

(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.

(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.

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

(10) "Organization" includes an entity that is a governmental employer.

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

(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:

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

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

(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.

(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.

(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 the act in question.

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

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

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

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

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

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

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

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

(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;

(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;

(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, or harass the recipient;

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

(8) Without a lawful 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;

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

(10) Knowingly incites another person through a telecommunication or other means to harass or participate in the harassment of a person;

(11) Knowingly alarms the recipient by making a telecommunication without a lawful purpose at an hour or hours known to be inconvenient to the recipient and in an offensive or repetitive manner.

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

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

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

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

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(4) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense. If a violation of division (A)(4) of this section results in economic harm of one thousand dollars or more but less than seven thousand five hundred dollars, telecommunications harassment is a felony of the fifth degree. If a violation of division (A)(4) of this section results in economic harm of seven thousand five hundred dollars or more but less than one hundred fifty thousand dollars, telecommunications harassment is a felony of the fourth degree. If a violation of division (A)(4) of this section results in economic harm of one hundred fifty thousand dollars or more, telecommunications harassment is a felony of the third degree.

(D) No cause of action may be asserted in any court of this state against any provider of a telecommunications service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, or against any officer, employee, or agent of a telecommunication service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, for any injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section. A provider of a telecommunications service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, or an officer, employee, or agent of a telecommunications service, interactive computer service as defined in section 230 of Title 47 of the United States Code, or information service, is immune from any civil or criminal liability for injury, death, or loss to person or property that allegedly arises out of the provider's, officer's, employee's, or agent's provision of information, facilities, or assistance in accordance with the terms of a court order that is issued in relation to the investigation or prosecution of an alleged violation of this section.

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

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

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

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

(F) Divisions (A)(5) to (11) and (B)(2) of this section do not apply to a person who, while employed or contracted by a newspaper, magazine, press association, news agency, news wire service, cable channel or cable operator, or radio or television station, is gathering, processing,

transmitting, compiling, editing, or disseminating information for the general public within the scope of the person's employment in that capacity or the person's contractual authority in that capacity.

(G) As used in this section:

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

- (a) All wages, salaries, or other compensation lost as a result of the criminal conduct;
- (b) The cost of all wages, salaries, or other compensation paid to employees for time those employees are prevented from working as a result of the criminal conduct;
- (c) The overhead costs incurred for the time that a business is shut down as a result of the criminal conduct;
- (d) The loss of value to tangible or intangible property that was damaged as a result of the criminal conduct.

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

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

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

**SECTION 2.** That existing sections 2903.211 and 2917.21 of the Revised Code are hereby

repealed.



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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_\_ day of \_\_\_\_\_, A. D. 20 \_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_