As Introduced

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Representative Anielski

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

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A B I L L

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 or emotional distress to a member of the other person's immediate family.

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 member of the other person's immediate family or cause mental distress or emotional distress to the other person or a member of the other person's immediate family.

(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, 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. 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 or receipt of information or data through the use of 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) "Emotional distress" means significant mental suffering
or distress that may but does not necessarily require medical or
other professional treatment or counseling.

(11) "Immediate family" means a spouse, parent, child,
sibling, or other person who regularly resides in the household or
who within the previous six months regularly resided in the
household.

(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 the telecommunication with
purpose to harass, intimidate, annoy, alarm, 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
(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, annoy, alarm, or harass the recipient;

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

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

(9) Knowingly makes any false statement concerning the death, injury, illness, disfigurement, reputation, indecent conduct, or criminal conduct of any person or any member of the person's family with purpose to abuse, threaten, intimidate, or harass the person;
(10) Makes the telecommunication for the purpose of harassing another person who is under eighteen years of age, regardless of whether the person under eighteen years of age consents to the harassment:

(11) Urges or incites another person through a telecommunication or other means to harass or participate in the harassment of a person:

(12) Makes a 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:

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

(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 create and maintain an internet web site or web page that is accessible to one or more persons and that contains statements created 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), or (6), (7), (8), (9), (10), (11), (12), or (13) 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 265
misdemeanor of the first degree on a first offense and a felony of 266
the fifth degree on each subsequent offense. If a violation of 267
division (A)(4) of this section results in economic harm of one 268
thousand dollars or more but less than seven thousand five hundred 269
dollars, telecommunications harassment is a felony of the fifth 270
degree. If a violation of division (A)(4) of this section results 271
in economic harm of seven thousand five hundred dollars or more 272
but less than one hundred fifty thousand dollars, 273
telecommunications harassment is a felony of the fourth degree. If 274
a violation of division (A)(4) of this section results in economic 275
harm of one hundred fifty thousand dollars or more, 276
telecommunications harassment is a felony of the third degree. 277

(D) No cause of action may be asserted in any court of this 278
state against any provider of a telecommunications service, 279
interactive computer service as defined in section 230 of Title 47 280
of the United States Code, or information service, or against any 281
officer, employee, or agent of a telecommunication service, 282
interactive computer service as defined in section 230 of Title 47 283
of the United States Code, or information service, for any injury, 284
death, or loss to person or property that allegedly arises out of 285
the provider's, officer's, employee's, or agent's provision of 286
information, facilities, or assistance in accordance with the 287
terms of a court order that is issued in relation to the 288
investigation or prosecution of an alleged violation of this 289
section. A provider of a telecommunications service, interactive 290
computer service as defined in section 230 of Title 47 of the 291
United States Code, or information service, or an officer, 292
employee, or agent of a telecommunications service, interactive 293
computer service as defined in section 230 of Title 47 of the 294
United States Code, or information service, is immune from any 295
civil or criminal liability for injury, death, or loss to person 296
or property that allegedly arises out of the provider's,
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) 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

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