## As Passed by the Senate

# 131st General Assembly

Regular Session 2015-2016

Sub. H. B. No. 151

## 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

То	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
<u>member</u> or <u>mental distress to the other person or the other</u>	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
<pre>communication or any electronic method of remotely transferring</pre>	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

  pleaded guilty to a violation of this section or a violation of

  section 2911.211 of the Revised Code.

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- (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 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

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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.

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- (C) Section 2919.271 of the Revised Code applies in 107 relation to a defendant charged with a violation of this 108 section.
  - (D) As used in this section:
- (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 116 117 employed by or belonging to the same corporation, association, 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 126 127 electronic method of remotely transferring information, 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:

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

(9) "Sexual motivation" has the same meaning as in section	160
2971.01 of the Revised Code.	161
(10) "Organization" includes an entity that is a	162
governmental employer.	163
(11) "Family or household member" means any of the	164
following:	165
(a) Any of the following who is residing or has resided	166
with the person against whom the act prohibited in division (A)	167
(1) of this section is committed:	168
(i) A spouse, a person living as a spouse, or a former	169
spouse of the person;	170
(ii) A parent, a foster parent, or a child of the person,	171
or another person related by consanguinity or affinity to the	172
person;	173
(iii) A parent or a child of a spouse, person living as a	174
spouse, or former spouse of the person, or another person	175
related by consanguinity or affinity to a spouse, person living	176
as a spouse, or former spouse of the person.	177
(b) The natural parent of any child of whom the person	178
against whom the act prohibited in division (A)(1) of this	179
section is committed is the other natural parent or is the	180
putative other natural parent.	181
(12) "Person living as a spouse" means a person who is	182
living or has lived with the person against whom the act	183
prohibited in division (A)(1) of this section is committed in a	184
common law marital relationship, who otherwise is cohabiting	185
with that person, or who otherwise has cohabited with the person	186
within five years prior to the date of the alleged commission of	187

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### the act in question.

- (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.
- (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 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 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 <u>Makes</u> 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
	231
recipient;	231
(2) Describes, suggests, requests, or proposes that the	232
(2) Describes, suggests, requests, or proposes that the	232
(2) Describes, suggests, requests, or proposes that the caller, the recipient of the telecommunication, or any other	232 233
(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	232 233 234
(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	232 233 234 235
(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	232 233 234 235 236
(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	232 233 234 235 236 237
(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	232 233 234 235 236 237 238
(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;	232 233 234 235 236 237 238 239
(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	232 233 234 235 236 237 238 239
(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;	232 233 234 235 236 237 238 239 240 241
(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	232 233 234 235 236 237 238 239 240 241

resides at the premises to which the telecommunication is made

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

harassment of a person;	276
(11) Knowingly alarms the recipient by making a	277
telecommunication without a lawful purpose at an hour or hours	278
known to be inconvenient to the recipient and in an offensive or	279
repetitive manner.	280
(B) (1) 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
(2) No person shall knowingly post a text or audio	285
statement or an image on an internet web site or web page for	286
the purpose of abusing, threatening, or harassing another	287
person.	288
(C)(1) Whoever violates this section is guilty of	289
telecommunications harassment.	290
(2) A violation of division (A)(1), (2), (3), $\frac{1}{2}$ (5), (6),	291
(7), (8), (9), (10), or (11) 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

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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

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
<pre>material of that nature.</pre>	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.

(2) "Caller" means the person described in division (A) of	395
this section who makes or causes to be made a telecommunication	396
or who permits a telecommunication to be made from a	397
telecommunications device under that person's control.	398
(3) "Telecommunication" and "telecommunications device"	399
have the same meanings as in section 2913.01 of the Revised	400
Code.	401
(4) "Sexual activity" has the same meaning as in section	402
2907.01 of the Revised Code.	403
(F)(5) "Family or household member" means any of the	404
<pre>following:</pre>	405
(a) Any of the following who is residing or has resided	406
with the recipient of the telecommunication against whom the act	407
prohibited in division (A)(9) of this section is committed:	408
(i) A spouse, a person living as a spouse, or a former	409
spouse of the recipient;	410
(ii) A parent, a foster parent, or a child of the	411
recipient, or another person related by consanguinity or	412
affinity to the recipient;	413
(iii) A parent or a child of a spouse, person living as a	414
spouse, or former spouse of the recipient, or another person	415
related by consanguinity or affinity to a spouse, person living	416
as a spouse, or former spouse of the recipient.	417
(b) The natural parent of any child of whom the recipient	418
of the telecommunication against whom the act prohibited in	419
division (A)(9) of this section is committed is the other	420
natural parent or is the putative other natural parent.	421
(6) "Person living as a spouse" means a person who is	422

Section 2. That existing sections 2903.211 and 2917.21 of

the Revised Code are hereby repealed.

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