

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4205/P1dn
JEO:jlg:hmh

January 24, 2000

Sarah:

This is a preliminary draft for your review. Please note the following when looking over the draft:

1. I did a bit of quick (and thus far from exhaustive) research into what other states have done in the area of criminal threatening. Most of the other states that have a statute dealing with some sort of criminal threatening include an element requiring that the defendant have the intent to "terrorize" or frighten the person who is threatened. A number of the states also require that the defendant intend for the statement to be taken as a threat, regardless of whether the threatened person perceives it that way or is actually frightened or terrorized. These requirements are apparently meant in part to avoid both prosecutions of so-called "idle" threats and challenges to the statute being unconstitutionally overbroad. They also reflect a policy choice to focus on those cases where the person uttering the threat has a purpose that should be punished because of its intended or likely harm to the interests of others. As a starting point, the language in this draft includes elements similar to those found in many of the other states. If these elements makes the statute narrower than you want it to be, we can change the language.

2. There are current statutes that cover threats made to others, though they apply in limited circumstances (compared to this draft). Specifically, it is a Class B misdemeanor to make a telephone call and threaten to inflict injury or physical harm to another (s. 947.012 (1) (a), stats.) or to send an e-mail or similar communication that threatens to inflict injury or physical harm to another (s. 947.0125 (2) (a), stats.). Also, a person commits a Class A misdemeanor if, with intent to harass or intimidate, he or she subjects a person to physical contact or engages in a course of conduct that harasses or intimidates another and if the person's acts are "accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm." Section 947.013 (1r) (a), stats. Given the way this draft is currently written, a person could conceivably be charged under both proposed s. 947.014 and under one or more of the current laws covering threats to another. Is that your intent?

Also, note that providing for a Class E felony penalty in this draft creates anomalies, in both the punishment of a defendant and in the treatment the victim's interests, between the provisions of the draft and the current statutes mentioned above. For instance, if, over a period of time, a defendant harasses another person and makes

“credible” threats that put that person in “reasonable fear” of being killed, the defendant is guilty only of a Class A misdemeanor (up to nine months in jail); on the other hand, a person who makes one death threat to another person is guilty of a Class E felony, even if the person making the threat had no intention of carrying it out and even if the person threatened was not actually frightened or intimidated by the threat.

There are ways to avoid creating these anomalies. For instance, the draft could provide for a different (lower) penalty. Or the draft could include a requirement that the threat be “credible” and that it place the threatened person in reasonable fear of death, just as is required under s. 947.013 (1r) (a), stats.; however, that may narrow the draft more than you intend. We could also try modifying the current statutes to cover death threats specifically—for instance, either s. 947.012 or 947.0125, stats., or both could be expanded to cover threats made by other means, such as notes or letters, and could provide some increased penalty if the threat is a death threat.

3. Felony harassment is included as one of the offenses covered under ss. 938.208 (1) (a) (relating to holding a juvenile in a secure detention facility) and 938.34 (4m) (b) 1., stats. (relating to placement of adjudicated delinquents in a secured correctional facility or secured child caring institution under the supervision of DOC). Do you want proposed s. 947.014 covered under those statutes as well?

Likewise, bomb scares are considered to be a predicate act of “racketeering” under Wisconsin’s Organized Crime Control Act (ss. 946.80 to 946.88, stats.) and a “serious offense” for purposes of s. 969.08, stats. (allowing revocation of pretrial release for the commission of a serious offense while out on bail). Do you want to include proposed s. 947.014 under either of these statutes?

Please let me know if you have any questions or changes.

Jefren E. Olsen
Legislative Attorney
Phone: (608) 266-8906
E-mail: Jefren.Olsen@legis.state.wi.us