

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4204/P1dn
JEO:jlj:jf

January 18, 2000

Pete Hanson:

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 of course change the language.

2. There are current statutes that cover threats made to others, though they would not apply to the situation that occurred in Chippewa County, which I believe you said involved threatening letters. 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.

None of these statutes specifically apply to threats to school officers or employes, who are the only persons protected by this draft. The legislature may, of course, as a matter of public policy, decide to provide school officers and employes with greater protection against threats. However, there are 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 or subject to great bodily harm, 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 threat to, say, a school teacher is guilty of a Class D felony, even if the person making the threat had no intention of carrying it out and even if the teacher 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 or great bodily harm, 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 current law to cover the situation that occurred in Chippewa County—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 made to a school officer or employe.

3. Section 940.20 (5) (b), stats., makes it a Class E felony to cause bodily harm to a technical college district or school district officer or employe. A *threat* to cause bodily harm will not be covered by s. 940.20 (5) (b), stats., or this draft, which covers only threats to cause death or great bodily harm. On the other hand, ss. 940.201, 940.203, 940.205 and 940.207, stats., all cover threats to cause bodily harm to witnesses, judges or employes of the departments of revenue, commerce or workforce development. Do you want the draft to cover threats to cause only bodily harm to school officers or employes?

4. The definition of “school officer or employe” includes officers and employes of public schools, private schools and charter schools. One article that I saw dealing with some threats made at a Chippewa County school said that the threats were made against *students*. Threats against students are not covered by this draft. Let me know if you want to cover such threats, and I can add language doing so.

5. The definition of “family member” follows the definition in s. 940.201 (1) (a), stats. (battery or threat to witnesses). Does it cover the persons you want it to cover?

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