1999 DRAFTING REQUEST

Bill

Received: **01/12/2000**

Received By: **olsenje**

Wanted: **Soon**

Identical to LRB:

For: **David Zien (608) 266-7511**

By/Representing: **Pete Hanson**

This file may be shown to any legislator: **NO**

Drafter: **olsenje**

May Contact:

Alt. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **MGD**

Pre Topic:

No specific pre topic given

Topic:

Criminal threatening

Instructions:

See Attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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FE Sent For:

Not Needed

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Jacket "1/2" for Senate

JED

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Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	olsenje	/P1 1/18 jg 1/18	1/18	1/18			

FE Sent For:

<END>

STATE BAR OF WISCONSIN
(608) 257-3838

Notes

4204

Erin By Pete Hanson

Threat of Death / Great Bodily harm
- school official or family members
- Knowledge of person's status

- DN on: a) 940.201 (eg)
b) Acts done by school official in official capacity?
c) intent to harass, frighten, terrorize, etc?

Class D felony

property?

Eau Claire Leader Telegram – Story – 1/12/00

School threats draw strong response
Officials, legislator want stronger law

By Tom Giffey
Leader-Telegram staff

HOLCOMBE -- Death threats such as those that closed Lake Holcombe School last fall deserve stronger punishments, state and school officials say.

"Right now (prosecutors') hands are tied; they can't do anything," state Rep. Tom Sykora, R-Chippewa Falls, said at a forum Tuesday night.

Under state law, students who make death threats can be charged only with misdemeanors that carry light sentences, Chippewa County District Attorney Tim Scobie said.

Because current laws don't have enough teeth to them, students don't consider threats to be serious offenses, district Superintendent Jim Schuchardt said.

But Sykora said he has drafted legislation that would give district attorneys the option of treating death threats the same as bomb threats -- as felonies punishable by jail time and probation.

Last fall a series of notes threatening students were found at the school and forced administrators to cancel classes twice.

Some of the 75 parents and students who spoke at Tuesday's forum said they were frightened by those threats.

"My husband and I both talked about a private school," said Julie Gilbertson, the mother of two Lake Holcombe students.

A 17-year-old boy was expelled until the end of the 2000-01 school year after admitting he made the first written threat in October. Later, a 13-year-old boy also was expelled for writing a note that canceled classes Nov. 18. Investigators still are unsure who wrote a third note that closed school Nov. 30.

Schuchardt said the American Civil Liberties Union is appealing the 17-year-old's expulsion. ACLU officials were unavailable for comment.

Sykora said that in the wake of recent school violence across the nation, school officials can no longer treat such threats as pranks.

"It may be a prank, but the results are a lot more than that," Sykora said, referring to the costs the school district and parents incur when school is canceled.

"There's been too many killings in the United States to look the other way," Chippewa County Sheriff Doug Ellis said.

Parents and other community members need to work together to deal with the threat of youth violence, Ellis said.

Several parents said more parental discipline is needed to curb violence at an early age. Unfortunately, the parents of children most at risk for committing violence usually don't get involved or attend public forums, Gilbertson said.

"Many parents complain, but only a handful are willing to 'do,' " she said.

Schuchardt said the district is working to better prepare for the possibility of school violence. Officials are considering purchasing more surveillance cameras for the school, and the school has developed a state-mandated safety plan, but no emergency drills have been run yet, Schuchardt said.

"(We) are still deeply concerned about the safety of the kids in the school," he said.

(END)

ARK

1ST DOCUMENT of Level 1 printed in FULL format.

ARKANSAS CODE OF 1987 ANNOTATED

*** CURRENT THROUGH THE 1999 SUPPLEMENT ***
*** ANNOTATIONS CURRENT THROUGH DECEMBER 15, 1999 ***

TITLE 5. CRIMINAL OFFENSES
SUBTITLE 2. OFFENSES AGAINST THE PERSON
CHAPTER 13. ASSAULT AND BATTERY
SUBCHAPTER 3. TERRORISM

Ark. Stat. Ann. § 5-13-301 (1999)

§ 5-13-301. Terroristic threatening

(a) (1) A person commits the offense of terroristic threatening in the first degree if:

(A) With the purpose of terrorizing another person, he threatens to cause death or serious physical injury or substantial property damage to another person; or

(B) With the purpose of terrorizing another person, he threatens to cause physical injury or property damage to a teacher or other school employee acting in the line of duty.

(2) Terroristic threatening in the first degree is a Class D felony.

(b) (1) A person commits the offense of terroristic threatening in the second degree if, with the purpose of terrorizing another person, he threatens to cause physical injury or property damage to another person.

(2) Terroristic threatening in the second degree is a Class A misdemeanor.

(c) (1) (A) A judicial officer, upon pretrial release of the defendant, shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) This no contact order shall remain in effect during the pendency of any appeal of a conviction under this section.

(C) The judicial officer or prosecuting attorney shall provide a copy of this no contact order to the victim and arresting agency without unnecessary delay.

(2) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter such orders as are consistent with § 5-2-305.

HISTORY: Acts 1975, No. 280, § 1608; 1979, No. 753, § 1; A.S.A. 1947, § 41-1608;

Acts 1993, No. 379, § 4; 1993, No. 388, § 4; 1993, No. 1189, § 3; 1995, No. 1302, § 2.

§NOTES:

PUBLISHER'S NOTES. Acts 1993, No. 1189, § 1, provided: "(a) The General Assembly of the State of Arkansas finds that the State of Arkansas is experiencing an increase in violent crime committed by school age juveniles and the growth of street gangs made up largely of school age juveniles. The General Assembly of the State of Arkansas further finds that the number of school related crimes is increasing.

"(b) It is the intent of the General Assembly of the State of Arkansas to insure the safest possible learning environment for our students, teachers and other school employees."

AMENDMENTS. The 1993 amendment, by identical acts Nos. 379 and 388, substituted "Class A misdemeanor" for "Class B misdemeanor" in (b)(2); and added (c).

The 1993 amendment by No. 1189 divided former (a)(1) into introductory language and (a)(1)(A); and added (a)(1)(B).

The 1995 amendment rewrote (c)(1)(A); redesignated former (c)(2) as (c)(1)(B); substituted "no contact order" for "protection order" in (c)(1)(B); and added (c)(1)(C) and present (c)(2).

CROSS REFERENCES. Harassment, § 5-71-208.

RESEARCH REFERENCES

ARK. L. REV.

Killenbeck, And Then They Did ...? Abusing Equity in the Name of Justice, 44 Ark. L. Rev. 235.

UALR L.J. Notes, Constitutional Law -- The Domestic Abuse Act of 1989 -- An Impermissible Expansion of Chancery Jurisdiction. Bates v. Bates, 303 Ark. 89, 793 S.W.2d 788 (1990), 13 UALR L.J. 537.

CASE NOTES

ANALYSIS

Constitutionality.
Communication of threat.
Defenses.
Evidence.
Fright.
Length of threat.
Separate Offenses.
Sufficient threats.

CONSTITUTIONALITY.

The mere overlapping of the provisions of this section and the assault statutes does not render this section unconstitutional. *Warren v. State, 272 Ark. 231, 613 S.W.2d 97 (1981).*

COMMUNICATION OF THREAT.

There is no language in the statute indicating the threat must be communicated by the accused directly to the person threatened to constitute a violation. *Richards v. State, 266 Ark. 733, 585 S.W.2d 375 (Ct. App. 1979).*

The conduct prohibited by this section is the communication of threat with the purpose of terrorizing another. It is not necessary that the recipient of the threat actually be terrorized. *Smith v. State, 296 Ark. 451, 757 S.W.2d §554 (1988).*

It would defy common sense to maintain that threatening to punch a woman hard enough to kill her unborn child does not carry with it a threat to cause serious physical injury to the woman personally. *Hagen v. State, 47 Ark. App. 137, 886 S.W.2d 889 (1994).*

DEFENSES.

The fact that a threat is conditioned in such a way as is calculated to coerce another person to abstain from a course of action he has a legal right to pursue is not a valid defense. *Richards v. State, 266 Ark. 733, 585 S.W.2d 375 (Ct. App. 1979).*

Because terroristic threatening requires a purposeful mental state, the defense of voluntary intoxication is available to a defendant charged with such crime. *Davis v. State, 12 Ark. App. 79, 670 S.W.2d 472 (1984).*

The defendant in a prosecution for terroristic threatening was required to show that he was incapacitated by drinking alcohol -- not merely that he drank alcohol -- to obtain an instruction on voluntary intoxication as a defense. *Davis v. State, 12 Ark. App. 79, 670 S.W.2d 472 (1984).*

EVIDENCE.

Evidence held sufficient to support the conviction. *Davis v. State, 12 Ark. App. 79, 670 S.W.2d 472 (1984).*

FRIGHT.

Under this section, it is an element of the offense that the defendant act with the purpose of terrorizing another person, i.e., it must be his "conscious object" to cause fright. *Knight v. State, 25 Ark. App. 353, 758 S.W.2d 12 (1988).*

To be found guilty of threatening, the defendant must intend to fill the victim with intense fright. *Knight v. State, 25 Ark. App. 353, 758 S.W.2d 12 (1988).*

LENGTH OF THREAT.

There is no language in this section which requires terrorizing over a prolonged period of time. *Warren v. State, 272 Ark. 231, 613 S.W.2d 97 (1981); Davis v. State, 12 Ark. App. 79, 670 S.W.2d 472 (1984).*

SEPARATE OFFENSES.

Where the evidence displayed defendant's impulse to kidnap the victim and additional impulses to batter and threaten to kill her when she resisted the kidnapping, convictions for the separate offenses of first-degree terroristic threatening, second-degree battery (§ 5-13-202), and attempted kidnapping (§ 5-3-201) were upheld because defendant's criminal acts were not all part of the attempted kidnapping and were not a continuing course of conduct. *Hagen v. State, 318 Ark. 139, 883 S.W.2d 832 (1994).*

SUFFICIENT THREATS.

The threat to shoot another is a threat to cause such serious physical injury to another person as to constitute terroristic threatening. *Richards v. State, 266 Ark. 733, 585 S.W.2d 375 (Ct. App. 1979).*

This section criminalizes not only present threats, but future threats as

well. *Walker v. State, 13 Ark. App. 124, 680 S.W.2d 915 (1984).*

Testimony of witnesses to defendant's statements that "he'd kill everyone in the building" was sufficient to sustain his conviction of terroristic threatening. A jury could easily conclude that he meant anyone or all. *Smith §v. State, 296 Ark. 451, 757 S.W.2d 554 (1988).*

This section does not require that it be shown that the accused has the immediate ability to carry out the threats. *Knight v. State, 25 Ark. App. 353, 758 S.W.2d 12 (1988).*

CITED: *Wade v. Tomlinson, 284 Ark. 432, 682 S.W.2d 751 (1985); United States v. Rapert, 813 F.2d 182 (8th Cir. 1987); Parker v. State, 300 Ark. 360, 779 S.W.2d 156 (1989); Bates v. Bates, 303 Ark. 89, 793 S.W.2d 788 (1990); Thomas v. State, 315 Ark. 79, 864 S.W.2d 835 (1993); Wesson v. State, 320 Ark. 380, 896 S.W.2d 974 (1995); Sanders v. State, 326 Ark. 415, 932 S.W.2d 315 (1996).*

NOTES APPLICABLE TO ENTIRE TITLE

PUBLISHER'S NOTES. Acts 1975, No. 928, which became effective simultaneously with the Arkansas Criminal Code on January 1, 1976, repealed former criminal provisions. Section 2 of that act provided that although all or part of a statute defining a criminal offense was amended or repealed by the act, the statute or part thereof so amended or repealed would remain in force for the purpose of authorizing the prosecution, conviction and punishment of a person committing an offense under the statute or part thereof prior to the effective date of the act.

For Comments regarding the Criminal Code, see Commentaries Volume B.

EFFECTIVE DATES. Acts 1975, No. 280, § 101: effective Jan. 1, 1976.

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

CASE NOTES

PURPOSE.

Purpose of the 1976 Criminal Code was to eliminate archaic statutes, replace the profusion of overlapping statutes, and develop an evenhanded method of grading offenses. *Brimer v. State, 295 Ark. 20, 746 S.W.2d 370 (1988).*

NOTES APPLICABLE TO ENTIRE CHAPTER

RESEARCH REFERENCES

ALR. Constitutionality of assault and battery laws limited to protection of females only or which provide greater penalties for males than for females. *5 ALR 4th 708.*

Dog as deadly or dangerous weapon for purposes of statutes aggravating offenses such as assault and robbery. *7 ALR 4th 607.*

Cane as deadly or dangerous weapon for purpose of statutes aggravating offenses such as assault and robbery. *8 ALR 4th 842.*

Single act affecting multiple victims as constituting multiple assaults or homicides. *8 ALR 4th 960.*

Human body parts other than feet as deadly or dangerous weapons for purposes of statutes aggravating offenses such as assault and robbery. *8 ALR 4th 1268.*

Kicking as assault or assault with a deadly weapon. *19 ALR 5th 823.*

Kicking as assault or assault with a deadly weapon. *19 ALR 5th 823.*

AM. JUR. 6 Am. Jur. 2d, Asslt. & B., § 1 et seq.

C.J.S. 6A C.J.S., Asslt. & B., § 1 et seq.

§

NOTES APPLICABLE TO ENTIRE SUBCHAPTER

PUBLISHER'S NOTES. For Comments regarding the Criminal Code, see Commentaries Volume B.

CROSS REFERENCES. Fines, § 5-4-201.
Term of imprisonment, § 5-4-401.

EFFECTIVE DATES. Acts 1979, No. 428, § 3: Mar. 20, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that there has been an outbreak of sniping incidents along highways in central Arkansas in recent weeks; that such sniping is a serious danger to persons using the highways; that the criminal penalties for such acts should be increased immediately to discourage further sniping incidents. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, Nos. 379 and 388, § 10: Mar. 8, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Attorney General and the Prosecuting Attorneys are in need of specific legislation by which to eliminate stalking and that immediate passage of this act is necessary to protect the public peace, health and safety of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 544, § 5: Mar. 16, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the definition of "terroristic act" does not include shootings into occupiable structures which have become prevalent in addition to shootings into automobiles which is covered in the definition. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1302, § 8: Apr. 14, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the Attorney General and the Prosecuting Attorneys are in need of specific legislation by which to eliminate stalking and that immediate passage of this act is necessary to protect the public peace, health and safety of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Validity and construction of terroristic threat statutes. *45 ALR 4th 949.*

Cal. Penal

10TH DOCUMENT of Level 1 printed in FULL format.

DEERING'S CALIFORNIA CODES ANNOTATED

*** THIS SECTION IS CURRENT THROUGH THE 1999 SUPPLEMENT (1998 SESSION) ***

INCLUDING URGENCY LEGISLATION THROUGH 1999 REG. SESS. CH. 400, 9/15/99
AND 1999
EXTRA. SESS. CH. 5X, 4/12/99

PENAL CODE
PART 1. Crimes and Punishments
TITLE 11.5. Terrorist Threats

Cal Pen Code § 422 (1999)

§ 422. Punishment for threats

Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

For the purposes of this section, "immediate family" means any spouse, whether by marriage or not, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

"Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

HISTORY:
Added Stats 1988 ch 1256 § 4, effective September 23, 1988. Amended Stats 1989 ch 1135 § 1; Stats 1998 ch 825 § 3 (SB 1796).

NOTES:
FORMER SECTIONS:
Former § 422, relating to nature of offense, was added Stats 1977 ch 1146 § 1 and repealed Stats 1987 ch 828 § 28.

AMENDMENTS:
1989 Amendment:

(1) Amended the first sentence by (a) adding a comma after "made" and after "threatened"; (b) adding "of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety" after "execution"; and (c) deleting "if he or she causes another person reasonably to be in sustained fear for his or her or §their immediate family's safety" at the end of the sentence; and (2) deleted "the term" after "section," in the second sentence.

1998 Amendment:

Added (1) ", made verbally, in writing, or by means of an electronic communication device," in the first paragraph; and (2) the third paragraph.

EDITOR'S NOTES:

For report to Legislature on control of criminal street gang activity, see the 1900 Note following Pen C § 186.20.

NOTE-

Stats 1998 ch 825 provides:

SECTION 1. It is the intent of this act to clarify that electronic communications are included in the actions that can constitute the crimes of harassment and stalking. It is not the intent of the Legislature, by adoption of this act, to restrict in any way the types of conduct or actions that can constitute harassment or stalking.

CROSS REFERENCES:

Suspension or expulsion from school for making terrorist threats; Ed C § 48900.7.

COLLATERAL REFERENCES:

Witkin & Epstein, Criminal Law (2d ed) §§ 45, 896.

Cal Jur 3d (Rev) Criminal Law §§ 1999, 2000.

FORMS:

Suggested form is set out below, following notes of decisions.

ATTORNEY GENERAL'S OPINIONS:

Communicating the words "I am going to kill the governor" to the governor or a member of his staff may violate Penal Code, §§ 71, 653m, 518, 240, or 422 if all of the elements of any such crimes are present. Under Penal Code, § 71, a threat is not "directly communicated" to a public officer where it is received by a secretary or other employee of the officer and turned over to the police without reaching the public officer. *63 Op Atty Gen Cal Cal 6.*

ANNOTATIONS:

Validity and construction of "terroristic threat" statutes. *58 ALR3d 533.*

NOTES OF DECISIONS

Pen. Code, §§ 422 and 422.5, antiterrorist legislation making it a felony to threaten to commit certain crimes in order to achieve "social or political goals," in which the terrorism prohibited by § 422 is defined in § 422.5, is unconstitutionally vague, since the language in § 422.5 as to social or political goals has no established legal meaning and provides no limitation. It is all-encompassing. Thus, the statute provides no guidance to the police, prosecutor, judge or jury who must decide whether a defendant's conduct was

motivated by the desire to achieve such a goal; such unguided discretion is an impermissible violation of constitutional due process requirements. Moreover, the unconstitutional section cannot be severed from the remainder of the statute, since the offending provision was intended to limit the reach of the entire statute and is fundamental to the crime defined by the Legislature. Thus both code sections are unconstitutional in their entirety. Accordingly, in a §prosecution under Pen. Code, § 422, subd. (a), for threats made against two police officers' families due to defendant's vendetta under the "Islamic Code," the trial court did not err in entering a judgment of dismissal. *People v Mirmirani (1981) 30 Cal 3d 375, 178 Cal Rptr 792, 636 P2d 1130.*

The crime defined by Pen. Code, §§ 422 and 422.5 (antiterrorist legislation making it a felony to threaten to commit certain crimes in order to achieve "social or political goals", in which the terrorism prohibited by § 422 is defined in § 422.5) can be committed by words alone, without action or an intent to act. Therefore, the strict standards required by U.S. Const., 1st Amend., must be applied in analyzing a challenge that the phrase "social or political goals" is unconstitutionally vague, and that both sections are therefore unconstitutional. *People v Mirmirani (1981) 30 Cal 3d 375, 178 Cal Rptr 792, 636 P2d 1130.*

Neither the plain meaning nor the legislative history of Pen. Code, § 422 (terrorist threats of death or great bodily injury), supports a conclusion that street gang membership is an element of the offense. From the express language of § 422 there is no requirement of gang membership. Also, although the statute was enacted in the same legislation as the California Street Terrorist Enforcement and Prevention Act (Pen. Code, § 186.20 et seq.), there is nothing in the legislative history that shows § 422 has a criminal street gang activity requirement, and prohibiting any person from making terrorist threats does not frustrate the purpose of the legislation. Thus, in a juvenile court proceeding, the court properly found that a minor had violated § 422, where the evidence showed that he had been involved in a confrontation with high school students of a different racial group and had verbally threatened and pointed a gun at one of them. *In re Ge M. (1991, 5th Dist) 226 Cal App 3d 1519, 277 Cal Rptr 554.*

In a juvenile court proceeding adjudicating a petition that a minor be declared a ward of the court (Welf. & Inst, Code, § 602), there was substantial evidence to support the trial court's finding that the minor had violated Pen. Code, § 422 (threatening another with death or great bodily harm). The evidence showed that the minor communicated to a third party his threat that he would shoot a specific person, and that the third party conveyed this threat to the intended victim. Pen. Code, § 422, does not in terms apply only to threats made by the threatener personally to the victim nor is this limitation reasonably inferable from its language. The threat may as readily be conveyed by the threatener through a third party as personally to the intended victim. Where the threat is conveyed through a third party intermediary, the specific intent element of the statute is implicated. Given the hostile climate between the minor and the victim, the communication of the threat to the victim's friend who had been a witness to antecedent hostilities supported the inference the minor intended the friend act as intermediary to convey the threat to the victim. *In re David L. (1991, 3rd Dist) 234 Cal App 3d 1655, 286 Cal Rptr 398.*

Pen. Code, § 422, proscribes threatening another with death or great bodily harm. It contemplates a threat so unequivocal, unconditional, immediate, and specific that it conveys to the victim an immediate prospect of execution. Even though the person making the threat must have the specific intent that it be taken as a threat, he need have no intent of actually carrying it out. Also, as a consequence thereof the person threatened must reasonably be in sustained fear

for his safety or that of his immediate family. *In re David L. (1991, 3rd Dist) 234 Cal App 3d 1655, 286 Cal Rptr 398.*

Pen. Code, § 422 (threatening another with death or great bodily harm), does not require a showing af imminent conduct. It requires only that the words used be of an immediately threatening nature and convey an immediate prospect of execution even though the threatener may have no intent actually to engage in the threatened conduct. The threat is sufficient if it induces a sustained §fear. The statute does not require the showing of an immediate ability to carry out the stated threat or an expression of precise details as to time or exact manner of execution. *In re David L. (1991, 3rd Dist) 234 Cal App 3d 1655, 286 Cal Rptr 398.*

Pen. Code, § 422 (threatening another with death or great bodily harm), was not unconstitutionally broad as applied to a minor who communicated a threat to shoot a specific person through a third party. First, the constitutional claim was not properly presented or developed in the minor's appellate brief to require appellate review. Moreover, even if the minor properly presented the claim, § 422 does not reach a substantial amount of conduct protected by the Constitution to be considered overbroad. *In re David L. (1991, 3rd Dist) 234 Cal App 3d 1655, 286 Cal Rptr 398.*

In a prosecution for robbery (Pen. Code, $ 211), the trial court did not err in permitting defendant to be impeached with his prior conviction under Pen. Code, $ 422 (willful threat to commit crime resulting in death or great bodily injury), even though the statutory definition does not require an intent to actually carry out the threatened injury. A violation of Pen. Code, $ 422, necessarily indicates moral turpitude, since the making of such threats violates generally accepted standards of moral behavior, whether or not the person intended to actually carry out those threats. *People v Thornton (1992, 4th Dist) 3 Cal App 4th 419, 4 Cal Rptr 2d 519.*

Defendant's conviction under Pen. Code, § 422, which makes it a crime to threaten another with death or great bodily injury under certain circumstances, was not invalid, even though the statute does not require that the speaker intended to carry out the threat. The statute is not unconstitutionally overbroad even if it does not require such an intent. So long as the threat on its face and in the circumstances in which it is made is so unequivocal, unconditional, immediate and specific as to the person threatened, as to convey a gravity of purpose and imminent prospect of execution, the protections guaranteed by U.S. Const., 1st Amend., are not violated. *People v Fisher (1993, 1st Dist) 12 Cal App 4th 1556, 15 Cal Rptr 2d 889.*

Defendant was erroneously convicted of violating Pen. Code, § 422 (terrorist threats), where the only evidence of threats were statements in which defendant threatened to kill the victims if they called the police. Under the express terms of the statute, a threat must be an "unconditional" threat. The Legislature included the word "unconditional" in a carefully drafted revised statute that was designed to comport with constitutional guidelines articulated by the federal court. Moreover, the language of the statute is clear and unambiguous; there is no need to speculate as to its meaning. Since defendant's threats were conditioned on the victims' calling the police, they were not "unconditional," and therefore they did not constitute a violation of § 422. *People v Brown (1993, 2nd Dist) 20 Cal App 4th 1251, 25 Cal Rptr 2d 76.*

A gang member who threatened a potential witness several times by putting a gun to her head and in her mouth and warning her not to testify to a robbery she witnessed was properly convicted of violating Pen. Code, § 422, making it a crime to threaten another with death or great bodily injury under certain circumstances. Although two of the threats were conditional--that defendant

would kill the victim if she testified against his fellow gang members--a threat is not excluded from Pen. Code, § 422, merely because it is conditional. Conditional threats are true threats if their context reasonably conveys to the victim that they are intended, and U.S. Const., 1st Amend., is not implicated by such threats since they do not concern political or social discourse or the so-called marketplace of ideas. Moreover, the statute provides that the threat must be "so unconditional. . .as to convey to the [victim] a gravity of purpose and an immediate prospect of execution . . .." If the fact that a threat is §conditioned on something occurring renders it not a true threat, there would have been no need to include the word "so" in the statement. Also, in one incident defendant threatened to kill the victim "right then and there," as he continued to hold the gun in her mouth. That testimony established that defendant unconditionally threatened the victim. *People v Brooks (1994, 4th Dist) 26 Cal App 4th 142, 31 Cal Rptr 2d 283.*

In a prosecution for threatening another with immediate great bodily injury (Pen. Code, § 422) arising from defendant's threatening of his wife, the trial court did not abuse its discretion in denying defendant's motion to exclude evidence of the wife's fear of him. Pen. Code, § 422, incorporates a mental element on the victim's part as well as the defendant's. The prosecution must show (1) that the defendant had the specific intent that the statement would be taken as a threat, and (2) that the victim was in a state of "sustained fear." The prosecution must also show that the nature of the threat, both on "its face and under the circumstances in which it is made," was such as to convey an immediate prospect of execution of the threat and to render the victim's fear reasonable. The fact that defendant's wife knew he had killed a man, and that he was aware that she knew, was relevant and probative in establishing these elements. Evidence that she had been a past victim of defendant's violence was also germane. Moreover, the probative value was not outweighed by the prejudicial effect. Seldom will evidence of an accused's prior criminal conduct be inadmissible when it is the primary basis for establishing a crucial element of the offense. *People v Garrett (1994, 1st Dist) 30 Cal App 4th 962, 36 Cal Rptr 2d 33.*

In a prosecution for threatening another with immediate great bodily injury (Pen. Code, § 422) after defendant threatened his wife, evidence relating to the wife's fear of defendant, and, in particular, evidence of her knowledge of his prior conviction for manslaughter and the fact that he had beaten her on several occasions, did not constitute inadmissible character evidence under Evid. Code, § 1101. Subdivision (a) of that section proscribes the admission of evidence of a person's character or character traits "when offered to prove his or her conduct on a specified occasion." However, subdivision (b) of that section states an exception to the general rule: "Nothing in this section prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact . . . other than his or her disposition to commit such an act." In the present case, the evidence was admitted not to show defendant's disposition to commit the charged offense, but rather for the purpose of establishing crucial elements of that offense. Thus, Evid. Code, § 1101, posed no bar to admission of the evidence. *People v Garrett (1994, 1st Dist) 30 Cal App 4th 962, 36 Cal Rptr 2d 33.*

Defendant was properly convicted of violating Pen. Code, § 422 (terrorist threats), notwithstanding the conditional nature of her threat to the victim that if he did not join her in bringing her "Universe Reform Party" into power, she would hire gang members to kill him. The use of the conditional word "if" does not absolve a defendant from conviction under § 422. The statute requires the threat to be "so unequivocal, unconditional, immediate, and specific as to

convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat." The use of the word "so" indicates that unequivocality, unconditionality, immediacy, and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim. The four qualities are simply the factors to be considered in determining whether a threat, considered together with its surrounding circumstances, conveys those impressions to the victim. Language creating an apparent condition cannot save the threatener from conviction when the §condition is illusory, given the reality of the circumstances surrounding the threat. This interpretation comports with federal judicial rulings. *People v Stanfield (1995, 2nd Dist) 32 Cal App 4th 1152, 38 Cal Rptr 2d 328.*

There was sufficient evidence to support a conviction for making terrorist threats (Pen. Code, § 422) of defendant, who threatened her former attorney that if he did not join her in bringing her "Universe Reform Party" into power, she would hire gang members to kill him. Although grammatically conditional, this threat contained a considerable degree of unconditionality, since compliance with defendant's condition would be practically impossible. The other three pertinent factors, unequivocality, immediacy, and specificity, were also present in significant degrees. The threat was directed to the victim and specifically identified not only the manner in which it would be carried out, but confirmed defendant's possession of the means to accomplish it, i.e., $ 1,000 to hire gang members. The threat was also unequivocal and immediate. If the victim refused to join the party, a virtual certainty, the injury would occur. Thus, each of the four factors was sufficiently present to convey to the victim a gravity of purpose and imminent prospect of execution. Also the victim's fear was reasonable in that defendant communicated explicit threats, defendant proved that she had access to the victim's office by delivering a package, and the package contained a threatening item, a dead cat. *People v Stanfield (1995, 2nd Dist) 32 Cal App 4th 1152, 38 Cal Rptr 2d 328.*

"Sustained," for purposes of Pen. Code, § 422 (punishment for threats causing sustained fear), means a period of time that extends beyond what is momentary, fleeting, or transitory. The victim's knowledge of defendant's prior conduct is relevant in establishing that the victim was in a state of sustained fear. *People v Allen (1995, 2nd Dist) 33 Cal App 4th 1149, 40 Cal Rptr 2d 7.*

Substantial evidence supported defendant's conviction for terrorist threats, under Pen. Code, § 422 (punishment for threats causing sustained fear). The victim knew that defendant had made a practice of looking inside the victim's home, and had reported defendant's conduct to the police on previous occasions. Defendant threatened to kill the victim and her daughter while pointing a gun at the victim. The victim telephoned the police, who arrested defendant in approximately 15 minutes. Fifteen minutes of fear of a defendant who is armed, mobile, and at large, and who has threatened to kill the victim and her daughter, is more than sufficient to constitute "sustained" fear for purposes of this element of the statute. *People v Allen (1995, 2nd Dist) 33 Cal App 4th 1149, 40 Cal Rptr 2d 7.*

The trial court did not err in entering a judgment of conviction under Pen. Code, § 422 (threat to commit crime which will result in death or great bodily injury) despite the fact that some of the threats made by defendant against his former wife and a man she was dating were framed in linguistically conditional terms did not require reversal. The trial court fully instructed the jury in the elements of the crime described in Pen. Code, § 422, and, in doing so, made it clear that defendant could not be found guilty of a violation of the statute unless, among other things, the prosecution proved beyond a reasonable doubt

that a threat was so unequivocal, unconditional, immediate and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat. *People v Dias (1997, 5th Dist) 52 Cal App 4th 46, 60 Cal Rptr 2d 443.*

Pen. Code, § 422 (threat to commit crime which will result in death or great bodily injury) was enacted as part of the "California Street Terrorism Enforcement and Prevention Act" of 1988, but does not apply solely to street gang activity and may be applied to individuals. The conditional nature of a threat does not render it unpunishable, not all threats to perform illegal acts are protected by U.S. Const., 1st Amend., and a conditional threat may be §culpable depending upon its context. *People v Dias (1997, 5th Dist) 52 Cal App 4th 46, 60 Cal Rptr 2d 443.*

A threat subject to an apparent condition may nonetheless be culpable under Pen. Code, § 422 (threat to commit crime which will result in death or great bodily injury). Language creating an apparent condition cannot save the threatener from conviction when the condition is illusory, given the reality of the circumstances surrounding the threat. A seemingly conditional threat contingent on an act highly likely to occur may convey to the victim a gravity of purpose and immediate prospect of execution. It is that end which violates the statute. An absolutely unconditional threat is only one of several means by which that end may be accomplished. *People v Dias (1997, 5th Dist) 52 Cal App 4th 46, 60 Cal Rptr 2d 443.*

Defendant who made threatening statements to his girlfriend's work supervisor was properly convicted of violating Pen. Code, § 422, which makes it a crime to threaten another with death or great bodily injury under certain circumstances. Although defendant's words to the supervisor, "I'm going to get you," and then "I'll get back to you, I'll get you," standing alone, may not have conveyed a threat to commit a crime that would result in death or great bodily injury, in light of the strong public policy behind § 422, that every person has the right to be protected from fear and intimidation, and in light of the surrounding circumstances of the case, his words met the requirement that he make a grave threat to another's personal safety. Defendant approached the supervisor quickly, he yelled and cursed at him, he got within very close proximity to his face, and he displayed very angry behavior. Furthermore, defendant's activities after the making of the threat supported a finding that he was threatening death or great bodily injury. He set fire to the building where the supervisor worked, and the fire was discovered shortly after the supervisor reported to work; it was inferable from the facts that defendant knew when and where the supervisor reported to work. Thus, defendant's threat to get back at the supervisor could have been meant as a threat to burn down the building where the supervisor was located, clearly a crime that could result in death or great bodily injury. *People v Martinez (1997, 5th Dist) 53 Cal App 4th 1212, 62 Cal Rptr 2d 303.*

Defendant who threatened to blow up his girlfriend's car and home was properly convicted of violating Pen. Code, § 422, which makes it a crime to threaten another with death or great bodily injury under certain circumstances. The words used and the circumstances surrounding the words strongly evinced a threat to commit a crime that would result in death or great bodily injury to the girlfriend. Although the girlfriend testified that defendant did not make these threats, this testimony was impeached with her preliminary hearing testimony. Her claim was also contradicted by her activities on the evening the threats were made: moving her car and asking her estranged husband to stay with her. Furthermore, defendant threatened to blow up her house after getting into an argument with her and hitting her. Defendant clearly knew where she lived and knew her habits. Finally, the girlfriend was with defendant when he poured

gasoline around another woman's house, and she knew defendant was convicted of violating § 422 for those actions. *People v Martinez (1997, 5th Dist) 53 Cal App 4th 1212, 62 Cal Rptr 2d 303.*

Substantial evidence supported defendant's conviction for making a terrorist threat (Pen. Code, § 422), since his comments to the victim were unequivocal or specific, threatened the commission of a crime, and placed the victim in a state of sustained fear within the meaning of the statute. Even though defendant's words themselves--"you fucked up my brother's testimony. I'm going to talk to some guys from [my street gang]"--did not articulate a threat to commit a specific crime resulting in death or great bodily injury, the jury was free to interpret the words spoken from all of the surrounding circumstances of the §case. In this case, a rational juror could reasonably have found that defendant's threat to bring the victim to the attention of the gang as someone who had "ratted" on a fellow gang member presented a serious danger of death or great bodily injury. Moreover, defendant apparently acted on his intention. Thirty minutes after defendant's threat, fellow gang members parked in front of the victim's home and honked to get her attention, and gang members communicated to others that they were looking for her. Further, a rational juror could have found that defendant's words were sufficiently unequivocal, unconditional, immediate, and specific to convey to the victim a gravity of purpose and immediate prospect of death or serious bodily injury. A rational juror could also have found that defendant's threat placed the victim in a state of sustained fear. Even if the victim did not begin to seriously fear for her life until after she learned that gang members were looking for her, the period of time that she was in a state of sustained fear was more that momentary, fleeting, or transitory and, therefore, it was sufficiently long to satisfy the statute. *People v Mendoza (1997, 2nd Dist) 59 Cal App 4th 1333, 69 Cal Rptr 2d 728.*

The determination whether a defendant intended his or her words to be taken as a threat, and whether the words were sufficiently unequivocal, unconditional, immediate, and specific that they conveyed to the victim an immediacy of purpose and immediate prospect of execution of the threat, within the meaning of Pen. Code, § 422 (making a terrorist threat), can be based on all of the surrounding circumstances and not just on the words alone. Further, the parties' history can also be considered as one of the relevant circumstances. *People v Mendoza (1997, 2nd Dist) 59 Cal App 4th 1333, 69 Cal Rptr 2d 728.*

Prosecution under Pen C § 422 does not require an unconditional threat of death or great bodily injury. The reference to an "unconditional" threat in Pen C § 422 is not absolute. By definition, extortion punishes conditional threats, specifically those in which the victim complies with the mandated condition. Likewise, many threats involved in assault cases are conditional. A conditional threat can be punished as an assault, when the condition imposed must be performed immediately, the defendant has no right to impose the condition, the intent is to immediately enforce performance by violence and defendant places himself in a position to do so and proceeds as far as is then necessary. The use of the word "unconditional" was not meant to prohibit prosecution of all threats involving an "if" clause, but only to prohibit prosecution based on threats whose conditions precluded them from conveying a gravity of purpose and immediate prospect of execution. Further, imposing an "unconditional" requirement ignores the statutory qualification that the threat must be "so . . . unconditional . . . as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution . . . " (Pen C § 422). The use of the word "so" indicates that unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and

surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim. *People v Bolin (1998) 18 Cal 4th 297, 75 Cal Rptr 2d 412, 956 P2d 374.*

In a prosecution for making a terrorist threat (Pen. Code, § 422), the trial court committed reversible error in failing to instruct the jury on unanimity. The evidence presented established that defendant committed two acts of making terrorist threats, each of which could have been charged as a separate offense, yet the matter went to the jury on only one such offense. The jury was required to be either instructed on unanimity or informed that the prosecution had elected to seek conviction only for one of the events, so that a finding of guilty could only be returned if each juror agreed that the crime was committed at that time. The record must show that by virtue of the prosecutor's §statement, the jurors were informed of their duty to render a unanimous decision as to a particular unlawful act. Since the prosecutor did not directly inform the jurors of his election and of their concomitant duties, it was error for the judge to refuse a unanimity instruction in the first instance and then to disregard his sua sponte duty to so instruct. Further, the instructional error was not harmless, since it could not be said that, beyond a reasonable doubt, each of the 12 jurors agreed unanimously that the same act constituted the commitment of the crime. *People v Melhado (1998, 1st Dist) 60 Cal App 4th 1529, 70 Cal Rptr 2d 878.*

In order to find a defendant guilty of making a terrorist threat (Pen. Code, § 422), evidence to prove the following elements is required: 1) the defendant willfully threatened to commit a crime which, if committed, would result in death or great bodily injury; 2) the defendant made the threat with the specific intent that the statement be taken as a threat; 3) the threatening statement, on its face and under the circumstances in which it was made, was so unequivocal, unconditional, immediate, and specific as to convey to the person threatened a gravity of purpose and an immediate prospect of execution of the threat; and 4) the threatening statement caused the other person reasonably to be in sustained fear for his or her own safety, regardless of whether the defendant actually intended to carry out the threat. *People v Melhado (1998, 1st Dist) 60 Cal App 4th 1529, 70 Cal Rptr 2d 878.*

In a prosecution for making a terrorist threat (Pen. Code, § 422), the trial court did not err in modifying CALJIC No. 9.94 (defining the elements of the crime) to indicate to the jury that a conditional threat could qualify as a true threat under the statute if the context conveyed to the victim that the threat was intended. The gravamen of the crime of making a terrorist threat rests upon the effect that the threat has upon the victim. The language added to the instruction merely clarified that the jury was to consider the significance accorded the statement by the victim. *People v Melhado (1998, 1st Dist) 60 Cal App 4th 1529, 70 Cal Rptr 2d 878.*

In a prosecution for making threats to kill a certain individual (Pen. Code, § 422), substantial evidence supported a conviction even if there was no direct evidence that defendant knew the victim was home when defendant made the threats outside the victim's home. Section 422 is not violated by mere angry utterances or ranting soliloquies, however violent. However, § 422 does not require certainty by the threatener that his or her threat has been received by the threatened person. If one broadcasts a threat intending to induce sustained fear, § 422 is violated if the threat is received and induces sustained fear whether or not the threatener knows the threat has hit its mark. Thus, in this case, it was not necessary to prove that the victim was home. The statute only requires a threat with the specific intent that the statement be taken as a

threat. As to that requirement, the evidence was overwhelming and uncontradicted. Defendant repeatedly shouted, "I'm going to kill you, you son of a bitch" while trying to batter down the victim's front door and smash his front window. *People v Teal (1998, 2nd Dist) 61 Cal App 4th 277, 71 Cal Rptr 2d 644.*

A defendant who was convicted for making terrorist threats under Pen C § 422 was properly committed as a mentally disordered offender to the California Department of Mental Health under Pen C § 2962 prior to his parole. The defendant's conviction for violating Pen C § 422 assumes the truth of the elements of the offense, including the gravity of the threats, the speaker's intent to threaten the victim, and the victim's reaction of being placed in "sustained fear." Those elements are sufficient to constitute "force" within the meaning of Pen C § 2962. *People v Rodarte (1998, 2nd Dist) 63 Cal App 4th 342, 74 Cal Rptr 2d 321.*

In a prosecution under Pen C § 422, the trial court did not err in refusing §the defendant's request for an instruction on brandishing a deadly weapon (Pen C
§ 417, subd. (a)(1)) as a lesser related offense, where the defendant claimed that jurors could have felt the victim was not placed in reasonably sustained fear, as required for a terrorist threat, yet had the weapon, a pair of scissors, used against her in an angry or threatening manner. Instructions must be justified by the defendant's reliance on a theory of defense that would be consistent with a conviction for the related offense. Defendant's factual version was that he never used the scissors, and that the scratch on the victim's forehead was caused during a struggle for the money. Defense counsel's arguments to the jury showed no suggestion of any middle ground involving use of scissors; defense counsel argued that any threats, as testified to by the victim, were not to be taken seriously. He never suggested the scissors were present, let alone used. The offense of brandishing scissors was thus inconsistent with the defense. *People v Tufunga (1998, 1st Dist) 65 Cal App 4th 287, 76 Cal Rptr 2d 521.*

SUGGESTED FORMS

EDITOR'S NOTES:

Delete the body of the form in the main volume and substitute the following:

The ------ [Grand Jury or District Attorney] of the County of ------, State of California, hereby accuses ------ of a felony, that is: A violation of Section 422 of the Penal Code of the State of California, in that on or about ------ [date], in the County of ------, State of California, defendant did wilfully threaten ------ [name of person threatened] to commit a crime which would result in death or great bodily injury to the immediate family of ------ [threatened person], with the specific intent that the statement be taken as a threat, and which threat, under the circumstances in which it was made, was so unequivocal, unconditional, immediate, and specific as to convey to ------ [name of person threatened] a gravity of purpose and immediate prospect of execution of the threat, and to cause ------ reasonably to be in sustained fear for ------ [his or her or the immediate family's] safety.

ALLEGATION CHARGING TERRORISTIC THREAT

[Insert general form of indictment or information (see Penal C §951)]
The ------ [Grand Jury or District Attorney] of the County of ------, State

of California, hereby accuses ------ of a felony, that is: A violation of Section 422 of the Penal Code of the State of California, in that on or about ------ [date] , in the County of ------, State of California, the defendant wilfully threatened to commit a crime which would result in death or great bodily injury to another person, with intent to terrorize another person or with reckless disregard of the risk of terrorizing another person, and thereby ------ [caused another person reasonably to be in sustained fear for ------ (his or her or their) immediate family's safety or caused the evacuation of a ------ (building or place of assembly or facility used in public transportation) or interfered with essential public services or caused serious disruption of public activities].

Cal. Educ.

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*** THIS SECTION IS CURRENT THROUGH THE 1999 SUPPLEMENT (1998 SESSION) ***
INCLUDING URGENCY LEGISLATION THROUGH 1999 REG. SESS. CH. 400, 9/15/99
AND 1999
EXTRA. SESS. CH. 5X, 4/12/99

EDUCATION CODE
TITLE 2. ELEMENTARY AND SECONDARY EDUCATION
DIVISION 4. Instruction and Services
PART 27. PUPILS
CHAPTER 6. Pupil Rights and Responsibilities
ARTICLE 1. Suspension or Expulsion

Cal Ed Code § 48900.7 (1999)

§ 48900.7. Making terroristic threats as grounds for suspension or expulsion

(a) In addition to the reasons specified in Sections 48900, 48900.2, 48900.3, and 48900.4, a pupil may be suspended from school or recommended for expulsion if the superintendent or the principal of the school in which the pupil is enrolled determines that the pupil has made terroristic threats against school officials or school property, or both.

(b) For the purposes of this section, "terroristic threat" shall include any statement, whether written or oral, by a person who willfully threatens to commit a crime which will result in death, great bodily injury to another person, or property damage in excess of one thousand dollars ($ 1,000), with the specific intent that the statement is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, or for the protection of school district property, or the personal property of the person threatened or his or her immediate family.

HISTORY:
Added Stats 1997 ch 405 § 1 (AB 307).

NOTES:
CROSS REFERENCES:
Criminal offense of terrorist threats: Pen C § 422.

Colorado

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COLORADO REVISED STATUTES

*** THIS SECTION IS CURRENT THROUGH THE 1998 SUPPLEMENT (1998 SESSIONS) ***

TITLE 18. CRIMINAL CODE
ARTICLE 9. OFFENSES AGAINST PUBLIC PEACE, ORDER, AND DECENCY
PART 1. PUBLIC PEACE AND ORDER

C.R.S. 18-9-115 (1998)

18 9 115. Endangering public transportation

(1) A person commits endangering public transportation if such person:

(a) Tampers with a facility of public transportation with intent to cause any damage, malfunction, or nonfunction which would result in the creation of a substantial risk of death or serious bodily injury to anyone; or

(b) Stops or boards a public conveyance with the intent of committing a crime thereon; or

(c) On a public conveyance, knowingly threatens any operator, crew member, attendant, or passenger:

(I) With death or imminent serious bodily injury; or

(II) With a deadly weapon or with words or actions intended to induce belief that such person is armed with a deadly weapon; or

(d) On a public conveyance:

(I) Knowingly or recklessly causes bodily injury to another person; or

(II) With criminal negligence causes bodily injury to another person by means of a deadly weapon.

(2) "Public" means offered or available to the public generally, either free or upon payment of a fare, fee, rate, or tariff, or offered or made available by a school or school district to pupils regularly enrolled in public or nonpublic schools in preschool through grade twelve.

(3) "Public conveyance" includes a train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device intended, designed, adapted, and used for the public carriage of persons or property.

(4) "Facility of public transportation" includes a public conveyance and any area, structure, or device which is designed, adapted, and used to support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance or the loading or unloading of passengers or goods.

(5) Endangering public transportation is a class 3 felony.

HISTORY: Source: L. 71: R&RE, p. 471, § 1.C.R.S. 1963: § 40-9-116.L. 77: (1)(c) amended, p. 969, § 56, effective July 1.L. 94: (1) amended, p. 1344, § 1, effective July 1.L. 96: (2) amended, p. 1335, § 1, effective July 1.

D2.

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*** ANNOTATIONS CURRENT THROUGH 432 A.2d 132 ***
*** (1999 FIRST SPECIAL SESSION OF THE 140TH GENERAL ASSEMBLY) ***

TITLE 11. CRIMES AND CRIMINAL PROCEDURE
PART I. DELAWARE CRIMINAL CODE
CHAPTER 5. SPECIFIC OFFENSES
SUBCHAPTER II. OFFENSES AGAINST THE PERSON
SUBPART A. ASSAULTS AND RELATED OFFENSES

11 Del. C. § 621 (1999)

§ 621. Terroristic threatening; class G felony; class A misdemeanor; penalties

(a) A person is guilty of terroristic threatening when:

(1) The person threatens to commit any crime likely to result in death or in serious injury to person or property; or

(2) The person makes a false statement or statements:

a. Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly or facility of public transportation; or

b. Knowing that the statement or statements are likely to cause serious inconvenience; or

c. In reckless disregard of the risk of causing terror or serious inconvenience.

(b) Any violation of subsection (a)(1) of this section shall be a class A misdemeanor. Any violation of subsection (a)(2) of this section shall be a class G felony, unless the place at which the risk of evacuation, serious inconvenience or terror is created is a place which has the purpose, in whole or in part, of acting as a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, in which case it shall be a class F felony.

Notwithstanding any provision of this subsection to the contrary, a first offense of subsection (a)(2) of this section by a person age 17 or younger shall be a class A misdemeanor.

(c) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of subsection (a)(2) of this section shall:

(1) Pay a fine of not less than $1,000 nor more than $2,500, which fine cannot be suspended; and

(2) Be sentenced to perform a minimum of 100 hours of community service.

HISTORY: 11 Del. C. 1953, § 621; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 330, § 1.

§NOTES:

REVISOR'S NOTE. --Section 3 of 70 Del. Laws, c. 330, provides: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable."

Section 4 of 70 Del. Laws, c. 330, provides: "Any action, case, prosecution, trial or any other legal proceeding in progress under or pursuant to the previous wording of the sections amended or repealed by this act, no matter what the stage the proceeding, shall be preserved and shall not become illegal or terminated upon May 8, 1996. For purposes of such proceedings in progress, the prior law shall remain in full force and effect."

EFFECT OF AMENDMENTS. --70 Del. Laws, c. 330, effective May 8, 1996, deleted the former last paragraph; added (b) and (c); and rewrote (a)(2).

SECTION IMPOSES CRIMINAL LIABILITY FOR USE OF WORDS, changing the common-law rule that words alone do not constitute an assault. *Allen v. State, Del. Supr., 453 A.2d 1166 (1982).*

BECAUSE THREAT ITSELF CREATES CERTAIN IDENTIFIABLE INJURIES THAT SHOULD BE PROTECTED AGAINST. --Even if the actor does not intend to actually carry out the threat, the threat itself creates certain identifiable injuries, e.g., mental distress or panic, that the Criminal Code should protect against. *Allen v. State, Del. Supr., 453 A.2d 1166 (1982).*

CRIME IS COMPLETE WHEN ACTOR THREATENS A CRIME, the commission of which would reasonably entail death or serious physical or property injury. Whether the threatened act is completed is immaterial. *Allen v. State, Del. Supr., 453 A.2d 1166 (1982).*

TERRORISTIC THREATENING IS LESSER INCLUDED OFFENSE OF ATTEMPTED EXTORTION. Bilinski v. State, Del. Supr., 462 A.2d 409 (1983).

THIS SECTION DOES NOT QUALIFY ACT OR MENTAL STATE REQUIRED as a conditional or unconditional threat. *Bilinski v. State, Del. Supr., 462 A.2d 409 (1983).*

CLAIM-OF-RIGHT DEFENSE DOES NOT APPLY to terroristic threatening. *Bilinski v. State, Del. Supr., 462 A.2d 409 (1983).*

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, subchapter, chapter, part or title.

IL

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*** THIS SECTION IS CURRENT THROUGH PUBLIC ACT 91-61 ***
*** ANNOTATIONS CURRENT THROUGH 707 N.E.2d p. 48 ***
*** (1999 REGULAR SESSION) ***

CHAPTER 720. CRIMINAL OFFENSES
CRIMINAL CODE
CRIMINAL CODE OF 1961
TITLE III. SPECIFIC OFFENSES
PART B. OFFENSES DIRECTED AGAINST THE PERSON
ARTICLE 12. BODILY HARM

720 ILCS 5/12-33 (1999)

§ 720 ILCS 5/12-33. Ritualized abuse of a child

Sec. 12-33. Ritualized abuse of a child. (a) A person is guilty of ritualized abuse of a child when he or she commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(1) actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being;

(2) forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(3) forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(4) involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(5) places a living child into a coffin or open grave containing a human corpse or remains;

(6) threatens death or serious harm to a child, his or her parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; or

(7) unlawfully dissects, mutilates, or incinerates a human corpse.

(b) The provisions of this Section shall not be construed to apply to:

(1) lawful agricultural, animal husbandry, food preparation, or wild game

hunting and fishing practices and specifically the branding or identification of livestock;

(2) the lawful medical practice of male circumcision or any ceremony related to male circumcision;

(3) any state or federally approved, licensed, or funded research project; or

(4) the ingestion of animal flesh or blood in the performance of a religious service or ceremony.

(c) Ritualized abuse of a child is a Class 1 felony for a first offense. A second or subsequent conviction for ritualized abuse of a child is a Class X felony for which the offender may be sentenced to a term of natural life imprisonment.

(d) For the purposes of this Section, "child" means any person under 18 years of age.

HISTORY:
Source: P.A. 87-1167, § 1; 90-88, § 5.

NOTES:
EFFECT OF AMENDMENTS.
The 1997 amendment by P.A. 90-88, effective January 1, 1998, in subdivision (b)(2) inserted "male" twice.

KY

39TH DOCUMENT of Level 1 printed in FULL format.

*** THIS SECTION IS CURRENT THROUGH THE 1998 REGULAR SESSION ***

TITLE L. KENTUCKY PENAL CODE
CHAPTER 508. ASSAULT AND RELATED OFFENSES

KRS § 508.080 (1998)

§ 508.080. Terroristic threatening

(1) A person is guilty of terroristic threatening when:

(a) He threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person; or

(b) He intentionally makes false statements for the purpose of causing evacuation of a building, place of assembly, or facility of public transportation.

(2) Terroristic threatening is a Class A misdemeanor.

HISTORY: Enact. Acts 1974, ch. 406, § 72.

NOTES:
CROSS-REFERENCES. Criminal coercion, KRS 509.080.
False reporting of fire or other emergency, KRS 519.040.

NORTHERN KENTUCKY LAW REVIEW. Vaughn and Moore, Battered Spouse Defense In Kentucky, *10 N. Ky. L. Rev. 399 (1983).*

CITED: *Commonwealth v. Ashcraft, 691 S.W.2d 229 (Ky. Ct. App. 1985); Commonwealth v. Arnette, 701 S.W.2d 407 (Ky. 1985).*

NOTES TO DECISIONS

ANALYSIS
1. Constitutionality.
2. Construction.
3. Wanton endangerment.
4. Instructions.
5. Knowledge of victim.

1. CONSTITUTIONALITY.
This section is not unconstitutionally vague and overbroad since the conduct proscribed, "threaten[ing] to commit a crime likely to result in death or serious physical injury" is not protected under either the Kentucky or United States Constitutions, and the language of the statute is sufficiently explicit

to put the average citizen on notice as to the nature of the conduct so proscribed. *Thomas v. Commonwealth, 574 S.W.2d 903 (Ky. Ct. App. 1978).*

§2. CONSTRUCTION.

This section does not require that the victim be placed in reasonable apprehension of immediate injury. *Thomas v. Commonwealth, 574 S.W.2d 903 (Ky. Ct. App. 1978).*

While this section does not apply in the case of idle talk or jesting, the defendant's intent to commit the crime of "terroristic threatening" can be plainly inferred from the defendant's own words (a threat to behead his wife and daughter) and the circumstances surrounding them, since all this section requires is that the defendant threaten "to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person." *Thomas v. Commonwealth, 574 S.W.2d 903 (Ky. Ct. App. 1978).*

3. WANTON ENDANGERMENT.

Defendant who held policemen and other hostages at gunpoint and fired at them as they fled could not be convicted of both terroristic threatening and wanton endangerment since the former is included in the latter. *Watson v. Commonwealth, 579 S.W.2d 103 (Ky. 1979).*

Terroristic threatening is a lesser included offense of wanton endangerment and a defendant cannot be convicted of both charges when they concern the same victim. *Commonwealth v. Black, 907 S.W.2d 762 (Ky. 1995).*

4. INSTRUCTIONS.

In prosecution for first-degree robbery, the defendant's evidence did not justify giving an instruction on terroristic threatening as a lesser included offense of robbery, where the defendant claimed that he told the victim that "me and you are going to fight, if you don't give me my money," and then left the scene, returning with a gun which he concealed beneath his clothes; however, he claimed that before he could remove the gun from his clothing or make any threats, the victim suddenly appeared and shot him. *Blankenship v. Commonwealth, 740 S.W.2d 164 (Ky. Ct. App. 1987).*

Where it would be "reasonable" for a juror to have a "reasonable doubt" as to whether the defendant committed first degree wanton endangerment and still find him guilty of the lesser charge of terroristic threatening, the jury should be instructed on first degree wanton endangerment, and in the alternative, terroristic threatening as a lesser included offense. *Commonwealth v. Black, 907 S.W.2d 762 (Ky. 1995).*

5. KNOWLEDGE OF VICTIM.

The criminal offense of terroristic threatening can be committed even if the victim has no knowledge of the threat, thus victim statements to his mother that he was going to kill defendant was terroristic threatening. *Brock v. Commonwealth, 947 S.W.2d 24 (Ky. 1997).*

RESEARCH REFERENCES. Caldwell's Kentucky Form Book, Prac. & Proc. Forms, 4th Ed., Indictments and Informations, Form 83.1.

Palmore, Kentucky Instructions to Juries, Danger or Harm to Persons, Assault, §§ 3.62, 3.63.

COLLATERAL REFERENCES. 31 Am. Jur. 2d, Extortion, Blackmail and Threats, §§ 1, 2, 8-17.

86 C.J.S., Threats and Unlawful Communications, §§ 2-10.

Criminal offense of bomb hoax or making false report as to planting of explosive. *93 A.L.R.2d 304.*

Validity and construction of "terroristic threat" statutes. *45 A.L.R.4th §949.*

47TH ALR ANNOTATION of Level 1 printed in FULL format.

ANNOTATION
VALIDITY AND CONSTRUCTION OF TERRORISTIC THREAT STATUTES

John P. Ludington, LL.B.

45 A.L.R.4th 949

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Annotations
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Encyclopedias and Texts
31 Am Jur 2d, Extortion, Blackmail, and Threats § 16.5

Practice Aids
42 Am Jur Proof of Facts 3d 85, Claims Under the Gender Motivated Violence Against Women Act of 1994

Digests and Indexes
L Ed Digest, Extortion and Blackmail § 1
ALR Digest, Extortion and Blackmail § 1
L Ed Index, Corroboration; Intent; Threats
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- - - - - - - - Footnotes - - - - - - -

n* Statutes, rules, regulations, and constitutional provisions bearing on the subject of the annotation are included in this table only to the extent that

they are reflected in the court opinions discussed in this annotation. The reader should consult the appropriate statutory or regulatory compilations to ascertain the current status of relevant statutes, rules, regulations, and constitutional provisions.

For federal cases involving state law, see state headings.

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Armstrong v Ellington (1970, WD Tenn) 312 F Supp 1119-§ 4
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Knight v State (1988) 25 Ark App 353, 758 SW2d 12-§ 24
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People v. Melhado, 60 Cal. App. 4th 1529, 70 Cal. Rptr. 2d 878 (1st Dist. 1998)-§§ 6, 8
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Bilinski v State (1983, Del Sup) 462 A2d 409, 45 ALR4th 941-§§ 8, 13, 33[a]

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Bragg v State (1985, Fla App D5) 475 So 2d 1255, 10 FLW 1972-§§ 8, 14[a]

GEORGIA
Aufderheide v State (1978) 144 Ga App 877, 242 SE2d 758-§§ 14[a], 34[a, c]
Boone v State (1980) 155 Ga App 937, 274 SE2d 49-§§ 2[b], 11, 15, 27

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Burrell v State (1976, Tex Crim) 541 SW2d 615-§ 20
Dues v State (1982, Tex Crim) 634 SW2d 304-§§ 2[b], 12, 26, 29, 30
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I. In general

[*1] Introduction

[*1a] Scope

This annotation n1 collects and analyzes the cases dealing with the validity or construction of state criminal statutes specifically denouncing the offenses of terroristic threatening or making a terroristic threat, as distinguished from related offenses such as terrorism, terrorizing, menacing, intimidation, harassment, or extortion.

- - - - - - - - Footnotes - - - - - - - -

n1 The annotation in *58 ALR3d 533* is superseded herein.

- - - - - - - - End Footnotes - - - - - - - -

[*1b] Related matters Validity, construction, and application of stalking statutes. *29 ALR5th 487*. Validity, construction, and application of "hold to service" provision of kidnapping statute. *28 ALR5th 754*. Validity, construction, and effect of "hate crimes" statutes, "ethnic intimidation" statutes, or the like. *22 ALR5th 261*. Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass. *95 ALR3d 411*. Possession of bomb, Molotov cocktail, or similar device as criminal offense. *42 ALR3d 1230*. Misuse of telephone as minor criminal offense. *97 ALR2d 503*. Construction and application of Consumer Credit Protection Act provisions *(18 U.S.C.A. §§ 891-894)* prohibiting extortionate credit transactions. *106 ALR Fed 33*. Prohibition of obscene or harassing telephone calls in interstate or foreign communications under *47 U.S.C.A. § 223*. *50 ALR Fed 541*. Validity, construction, and application of *18 U.S.C.A. § 875*(c), prohibiting transmission in interstate commerce of any communication containing any threat to kidnap any person or any threat to injure the person of another. *34 ALR Fed 785*. Elements of offense, and sufficiency of proof thereof, in prosecution for mailing threatening communication under *18 U.S.C.A. § 876*. *30 ALR Fed 874*. Validity, construction, and application of Federal Anti-Riot Act of 1968 *(18 U.S.C.A. §§ 2101, 2102)*. *22*

ALR Fed 256. Criminal liability for transportation of explosives and other dangerous articles under *18 U.S.C.A. §§ 831*-835 and implementing regulations. *8 ALR Fed 816.* Validity and construction of federal statute *(18 U.S.C.A. § 871)* punishing threats against the *President. 22 L Ed 2d 988.*

[*2] Summary and comment

[*2a] Generally

Several states have enacted statutes denouncing the offense of terroristic threatening or making a terroristic threat. Such statutes impose criminal liability for the use of words, changing the common-law rule that words alone do not constitute an assault. n2 The harm which they seek to prevent is the psychological distress following from an invasion of another's sense of security. n3

- - - - - - - - Footnotes - - - - - - - -

n2 *Allen v State (1982, Del Sup) 453 A2d 1166,* infra § 34[h].

n3 *Commonwealth v Speller (1983) 311 Pa Super 569, 458 A2d 198,* infra § 30.

- - - - - - - - End Footnotes - - - - - - - -

State statutes making it an offense to engage in terroristic threatening or to utter a terroristic threat have been held constitutional as against free speech objections (§ 3, infra), vagueness objections (§ 4, infra), and objections that the statute overlaps with a criminal assault statute (§ 5, infra).

Basically, the offense consists of making the threat (§§ 6-21, infra) with the requisite criminal intent (§§ 29-31, infra).

The form of the threat is not important. It need not take any particular form or be expressed in any particular words, and may be made by innuendo or suggestion. The words uttered will not be considered in a vacuum but rather in light of all the circumstances (§ 6, infra).

Under a terroristic threatening statute denouncing the communication of a threat to cause "serious injury," the term "serious injury" has been held to mean physical injury (§ 13, infra).

Threats which have been held to constitute violations include threats to kill (§ 14[a], infra), including a gun-brandishing robber's reproof "I ought to kill you" (§ 14[b], infra); threats to shoot (§ 15, infra), to stab (§ 16, infra), to assault (§ 18, infra), or to rape (§ 17, infra); threats to harm (§ 19, infra) or to "get" another person (§ 20, infra); and a warning that the accused has done something dangerous in a building (§ 21, infra).

The media of communication is also unimportant. An unlawful threat may be communicated by telephone (§ 22, infra), by mail (§ 23, infra), or by a third person, as long as the threat is communicated in such a way as to support the inference that the speaker intended or expected it to be conveyed to the victim (§ 24, infra).

There is authority that a nonverbally communicated threat may constitute an offense. A symbolic threat like the burning of a cross may be a terroristic threat, but it is not per se a terroristic threat (§ 25[a], infra). The cases disagree as to whether menacing acts may be symbolic threats proscribed by terroristic threat statutes. It has been held a terroristic threat to try to run a car off the road, or to abduct a little girl and pull up her dress, but not to point a gun at another person (§ 25[b], infra).

A solitary threat may constitute an offense (§ 7, infra), as may a threat unsupported by any overt act (§ 11, infra), or a threat beyond the threatener's present ability to carry out (§ 12, infra). A conditional threat-such as the classic "I'll kill you if you call the police"-may constitute a violation (§ 8, infra), as may a threat of action by a third person or persons (§ 9, infra). But the offense is not committed by idle talk or jests which do not have a reasonable tendency to create apprehension that the speaker will act according to the threat (§ 10, infra).

But while the words must have a tendency to create apprehension that the speaker will act according to the threat, it is not essential that the victim actually be placed in fear of imminent harm (§ 26, infra), or in a state of terror (§ 27, infra), or prolonged fear (§ 28, infra).

Most of the statutes specify the required criminal intent, which is frequently making the threat with the intent or purpose of causing fear in the victim or in reckless disregard of the risk of causing fear (§ 29, infra). The offense requires a settled purpose to terrorize, and is not established by a spur of the moment threat resulting from transitory anger (§ 31, infra). However, the offense may be committed without the accused's intent to carry out the threat (§ 30, infra).

Where a specific criminal intent is an element of the offense, voluntary intoxication is a defense, but where the offense does not require specific intent, intoxication is no defense (§ 32, infra).

The cases also go both ways on justification as a defense. A terroristic threat to collect a debt is not justified (§ 33[a], infra), but other cases hold that it is not an offense to utter a terroristic threat as a protection against the victim's perceived threat to the accused's personal safety (§ 33[b], infra).

Terroristic threats made in conjunction with other crimes present the question whether the threats can constitute a separate offense. It seems clear that the threats are a separate offense when uttered after completion of the other offense, such as postassault (§ 34[a], infra), postbattery (§ 34[b], infra), postburglary (§ 34[c], infra), or postkidnapping (§ 34[f], infra).

A different question is presented when the threat is uttered in the course of committing the other offense. One cannot be convicted of both terroristic threatening and wanton endangerment when the convictions rest on the same facts (§ 34[d], infra). A threat made in the course of a robbery has been held not a separate offense where the purpose of the threat is to accomplish the theft (§ 34[g], infra). On the other hand, the offense of making a terroristic threat has been held not to merge in the offense of attempting to influence a judicial officer (§ 34[e], infra).

The cases disagree as to whether a threat made in the course of an assault is a separate offense (§ 34[a], infra) and whether a threat made to overcome a sex crime victim's resistance is a separate offense (§ 34[h], infra).

[*2b] Practice pointers

In prosecutions for making a terroristic threat or terroristic threatening, proving the threat has not been a difficult problem. Some states require corroboration of the victim's testimony, but slight corroboration may be sufficient, and the question of corroboration is solely for the jury. n4

- - - - - - - - Footnotes - - - - - - -

n4 See, for example, *Moss v State (1978) 148 Ga App 459, 251 SE2d 374.*

- - - - - - - - End Footnotes - - - - - - - -

A more promising area for the defense is the accused's intent. Since direct evidence of the accused's intent is usually unavailable, the prosecution must establish intent by circumstantial evidence, which may be sufficient. n5 Intent may be shown by the accused's demeanor at the time of the offense n6 or by his acts and words, n7 and by the effect of the threat on the victim. n8 There is no "profile" of an accused uttering threats with the requisite intent. Unlawful threats may be uttered soberly n9 or by an individual acting "like a wild animal." n10

- - - - - - - - Footnotes - - - - - - -

n5 See, for example, *Moss v State (1976) 139 Ga App 136, 228 SE2d 30; Boone v State (1980) 155 Ga App 937, 274 SE2d 49.*

n6 See, for example, *Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180.*

n7 See, for example, *Dues v State (1982, Tex Crim) 634 SW2d 304.*

n8 See, for example, *State v Schweppe (1975) 306 Minn 395, 237 NW2d 609; Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180.*

n9 See, for example, *Commonwealth v Ashford (1979) 268 Pa Super 225, 407 A2d 1328.*

n10 See, for example, *Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180.*

- - - - - - - - End Footnotes - - - - - - - -

But the prosecutor who elicits testimony on direct examination that the accused was excited may be stepping into a trap. If defense counsel can get the witness to agree on cross-examination that the accused was upset, very angry, and not rational, and otherwise prove that the accused was in an agitated and angry state of mind, he may disprove the essential element of criminal intent. n11 The defense should support the cross-examination with evidence that the accused did not intend to carry out the threat. n12

- - - - - - - - Footnotes - - - - - - -

n11 See, for example, *Commonwealth v Sullivan (1979) 269 Pa Super 279, 409 A2d 888.*

n12 See, for example, *Commonwealth v Sullivan (1979) 269 Pa Super 279, 409 A2d 888.*

- - - - - - - - End Footnotes - - - - - - - -

Had the accused been drinking? Was he drunk? These are vital questions for the defense, whether or not voluntary intoxication is a defense. Intoxicated persons commonly make threats, as a police officer will admit. n13 But police officers n14 and others do not take such threats seriously, and they may be argued to be the transitory, spur of the moment angry threats which do not constitute an offense. n15 To show intoxication, lack of physical coordination and lack of memory of the events in question may be proved. n16

- - - - - - - - Footnotes - - - - - - -

n13 See, for example, *Commonwealth v Ashford (1979) 268 Pa Super 225, 407 A2d 1328.*

n14 See, for example, *Commonwealth v Ashford (1979) 268 Pa Super 225, 407 A2d 1328.*

n15 See, for example, *Commonwealth v Kidd (1982) 296 Pa Super 393, 442 A2d 826.*

n16 See, for example, *Davis v State (1984) 12 Ark App 79, 670 SW2d 472.*

- - - - - - - - End Footnotes - - - - - - - -

Is the accused a former mental patient? This fact also supports evidence of the accused's irrationality and absence of requisite criminal intent at the time of uttering the threats. n17

- - - - - - - - Footnotes - - - - - - -

n17 See, for example, *Wiggins v State (1984) 171 Ga App 358, 319 SE2d 528.*

- - - - - - - - End Footnotes - - - - - - - -

II. Validity

[*3] Free speech objections

In several cases, state statutes making it an offense to engage in terroristic threatening or to utter a terroristic threat have been held not unconstitutional as a violation of free speech.

A Georgia statute punishing terroristic threats and acts, and providing that a person commits a terroristic threat when he threatens to commit any crime of violence, or to burn or damage property, with the purpose of terrorizing

another, or of causing the evacuation of a building, place of assembly, or facility of public transportation, or otherwise causing serious public inconvenience, or when he makes such threats in reckless disregard of the risk of causing such terror or inconvenience, was held neither violative of the First Amendment right to free speech nor unconstitutionally vague, at least in pertinent parts, in *Masson v Slaton (1970, ND Ga) 320 F Supp 669,* the court granting a defense motion for judgment on the pleadings in an action for injunctive and declaratory relief against enforcement of the statute. As to the contention that the statute proscribed constitutionally protected conduct by making illegal bare statements without an overt act or attempt to carry out the threat, the court replied that statements alone can be without First Amendment protection; that although the right to free speech entitles an individual to advocate certain ideas regardless of their popularity, it does not extend to the threatening of terror, inciting of riots, or placing another's life or property in danger, and that the indictment against the plaintiff made just such an accusation-that he had threatened in the presence of a third party to burn and damage 11 automobiles owned by another for the purpose of terrorizing the owner. The court stated that the statute clearly required, in order for there to be a conviction, conduct which exceeded the bounds of protected free speech.

See *Allen v State (1988, Alaska App) 759 P2d 541,* § 4.

Defendant was properly convicted of violating terroristic threat statute where he showed coworker bullets and told coworker that he was going to shoot television journalist. Terroristic threat statute was not facially overbroad and thus did not unconstitutionally violate First Amendment, though it did not require that defendant have specific intent to carry out threat. Statute was legislative proscription of true threats, which fall within that group of expressions, such as fighting words, that are not constitutionally protected "pure speech". Statute required that proscribed statement constitute threat to commit crime resulting in death or great bodily injury, that maker of statement specifically intend that statement be taken as threat, and that threat be one which, on its face and under circumstances in which it was made, was so unequivocal, unconditional, immediate and specific as to convey to person threatened gravity of purpose and immediate prospect of execution. There was no requirement that defendant either directly communicate threat to victim or communicate threat to third party with intent that third party communicate threat to intended victim. *People v Hudson (1992, 2nd Dist) 5 Cal App 4th 131, 6 Cal Rptr 2d 690,* 92 CDOS 2973, 92 Daily Journal DAR 4657, review den, op withdrawn by order of ct (Cal) 92 CDOS 6484, 92 Daily Journal DAR 10284.

See *People v Steven S. (In re Steven S.) (1994, 1st Dist) 25 Cal App 4th 598, 31 Cal Rptr 2d 644,* 94 CDOS 4060, 94 *Daily Journal DAR 8155, reh den (Cal App 1st Dist) 1994 Cal App LEXIS 698* and review den (Cal) *1994 Cal LEXIS 5185,* § 25[a].

In *Lanthrip v State (1975) 235 Ga 10, 218 SE2d 771,* involving a statute providing that a person commits a terroristic threat when he threatens to commit any crime of violence with the purpose of terrorizing another person, the court rejected the contention that the statute was void for overbreadth, stating that the communication of terroristic threats to another person to commit a crime of violence upon that person falls outside of those communications and expressions which are protected by the First Amendment to the Constitution, and pointing out that the statute by its terms does not sweep within its ambit other activities

that in ordinary circumstances constitute an exercise of freedom of speech or of the press.

Statute criminalizing making threats of arson or bombing, as applied to defendant's statements, that he was going to "come down and blow the place up" and "drive in my truck and come blow you away" reached only true threats, not political speech, and thus, statute was not impermissibly broad. U.S.C.A. Const. Amend. 1; I.C.A. § 712.8. *State v. Milner, 571 N.W.2d 7 (Iowa 1997).*

A Kentucky statute providing that a person is guilty of terroristic threatening when he threatens to commit any crime likely to result in death or serious physical injury to another person, or likely to result in substantial property damage to another person, was held constitutional in *Thomas v Commonwealth (1978, Ky App) 574 SW2d 903,* as against the contention that it was overbroad. The court said that the conduct proscribed, threatening to commit a crime likely to result in death or serious personal injury, was clearly without constitutional protection under the First Amendment.

The Pennsylvania terroristic threats statute was held constitutional in *Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180,* as against the argument that it intringed the accused's right of free speech. The statute defined terroristic threats as threatening to commit any crime of violence with intent to terrorize another. The court said that the state had a sufficient interest in the welfare of its citizens to proscribe terroristic threats even though expression may be involved.

[*4] Vagueness objections

State criminal terroristic threat or terroristic threatening statutes have been upheld in a number of cases against constitutional due process challenge on the ground that the statutory language was impermissibly vague.

See *Armstrong v Ellington (1970, WD Tenn) 312 F Supp 1119,* an action seeking a declaratory judgment of the unconstitutionality of a state statute entitled "Prowling or traveling for purposes of destroying property or intimidating citizens-Threats or intimidation-Penalty," wherein the court struck down as overbroad provisions that proscribed the willful prowling or traveling or riding or walking to the disturbance of the peace or to the alarming of the citizens, or for the purpose of intimidating any citizen of the state, but upheld that portion proscribing prowling, traveling, riding, or walking for the purpose of terrorizing through threats. Noting that "terrorizing" means to reduce to terror by violence or threats, and that "terror" means an extreme fear or fear that agitates body and mind, the court stated that the term "terrorizing" was specific enough and within the appropriate area in which the state might protect the citizens even though expression might be involved.

The contention that a Georgia terroristic threats statute was unconstitutionally vague because it required a man of ordinary intelligence to guess at its meaning, and because some parts of the statute were so ambiguous as to fail to give fair and adequate warning of the conduct proscribed, was rejected in *Masson v Slaton (1970, ND Ga) 320 F Supp 669,* wherein the statute provided that a person commits a terroristic threat when he threatens to commit any crime of violence, or to burn or damage property, with the purpose of terrorizing another, or of causing the evacuation of a building, place of

assembly, or facility of public transportation, or otherwise causing serious public inconvenience, or when he makes threats in reckless disregard of the risk of causing such terror or inconvenience. However, the court ruled that it was only necessary to consider that part of the statute under which the plaintiff had been indicted, namely, the provision that a person commits a terroristic threat when he threatens to burn or damage property with the purpose of terrorizing another. Concluding that there was nothing vague or indefinite in this provision, the court stated that no meaningful contention could be made that the provision failed to adequately inform the plaintiff of the conduct prohibited.

Defendant, who had made phone calls claiming to know where woman's missing daughter was and claiming that she was with rough crowd doing drugs and photography, was not denied equal protection by being prosecuted under felony terroristic threatening statute rather than under misdemeanor harassment statute where felony offense required, as misdemeanor did not, false report of circumstances dangerous to human life and actually placing some person in fear of physical injury, and statutes thus did not prescribe different punishments for same offense; terroristic threatening statute did not reach speech mistakenly but reasonably believed to be true or practical joke, and it was thus not overbroad, where plain wording of statute required knowledge of falsity and proof of resulting fear of physical injury. *Allen v State (1988, Alaska App) 759 P2d 541*.

In prosecution in which defendant was charged with terroristic threatening for making telephone death threats to his wife, since statutory definition made offense depend on intent of accused rather than subjective reaction of victim, it was not error to omit playing of first part of tape of conversation, which defendant contended would have shown that his wife was afraid of him and had in fact goaded him into making threats; terroristic threatening statute was not unconstitutionally vague or overbroad by virtue of its reference to "repeated threats," notwithstanding defendant's contention that it was not clear whether reference was to threats on one occasion or several, where, in general, ordinary meaning of "repeated" encompassed both situations and, though there might be questions in unusual circumstances as to whether single statement constituted more than one threat, defendant had clearly made "repeated," individual threats, distributed over 15-minute conversation and interspersed with other matters. *Konrad v State (1988, Alaska App) 763 P2d 1369* (citing annotation).

See *People v Steven S. (In re Steven S.) (1994, 1st Dist) 25 Cal App 4th 598, 31 Cal Rptr 2d 644*, 94 CDOS 4060, 94 *Daily Journal DAR 6155, reh den (Cal App 1st Dist) 1994 Cal App LEXIS 698* and review den (Cal) *1994 Cal LEXIS 5185*, § 25[a].

In *Lanthrip v State (1975) 235 Ga 10, 218 SE2d 771*, a prosecution for the crime of terroristic threats, the indictment alleging that the accused threatened to commit the crime of murder, a crime of violence, with the purpose of terrorizing two named women, the court upheld the constitutionality of the statute defining the crime of terroristic threats against the contention that it was violative of due process because it was too vague, indefinite, uncertain, and overbroad to be capable of uniform enforcement. The court noted that the statute provided that a person commits a terroristic threat when he threatens to commit any crime of violence with the purpose of terrorizing another person, observing that the offense is consummated by the communication of the threat to

another person for the purpose of terrorizing that person. Noting that a criminal statute that defines the crime with sufficient definiteness to enable one familiar with the acts made criminal to determine when the statute is being violated is not void as offending due process requirements, the court stated that the present statute sufficiently met the constitutional test of due process and was not subject to the attacks made on it in the present case, observing that the unavoidable message of the express language contained in the statute was that one may not communicate to another person a threat to commit a crime of violence, for the purpose of terrorizing that person, without violating the statute. Pointing out that there are no hidden pitfalls or disguised traps into which the unwary may fall and commit the crime, the court stated that the statute can be read and understood by a person of ordinary intelligence seeking to avoid its violation.

Defendant could not credibly claim he had no notice that his conduct was within proscription of statute prohibiting threats of arson or bombing, where defendant's statements that he was going to "come down and blow the place up" and "drive in my truck and come blow you away" and his references to the Oklahoma City bombing, fell squarely within statute's target of threats to use explosive device, and thus, statute was not unconstitutionally vague as applied to defendant's conduct. I.C.A. § 712.8. *State v. Milner, 571 N.W.2d 7 (Iowa 1997).*

A Kansas statute making a terroristic threat a felony, and defining a terroristic threat as any threat to commit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly, or facility of transportation, or imparted in wanton disregard of the risk of causing such terror or evacuation, was held valid against a contention that it was unconstitutionally vague under both the state and federal constitutions, in *State v Gunzelman (1972) 210 Kan 481, 502 P2d 705, 58 ALR3d 522,* the court reversing on other grounds a conviction for making a terroristic threat to a highway patrol officer. The patrolman had issued a traffic ticket to one of the accused's truckdrivers, and the alleged terroristic threat, made at the patrolman's home, was apparently intended to prevent further tickets to the drivers. n18 Recognizing that a statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, the court, characterizing the thrust of the accused's constitutional argument as based upon a failure by the legislature to define the words "threat" and "terroristic," pointed out that a statute setting forth general definitions defined a threat as "a communicated intent to inflict physical or other harm on any person or on property." The court also noted that in a similar case, n19 the word "terrorize" had been defined as "to reduce to terror by violence or threats," and the word "terror" as "an extreme fear or fear that agitates body and mind." Given limiting definitions for the words "threat" and "terrorize," as those terms are understood by men of common intelligence, the court said, the statute proscribing terroristic threat survives any constitutional challenge for vagueness and uncertainty. Finally, the court observed that although the statute might have been directed at campus unrest, fire and bomb threats to public buildings, and acts of mob violence, the main elements of the offense were threats communicated with a specific intent to terrorize another, and that the wording of the statute appeared sufficient to proscribe such threats whether directed generally against one or more persons, and regardless of the purpose which the terrorist had in mind to accomplish.

- - - - - - - - Footnotes - - - - - - -

n18 Although not ruling on the sufficiency of the evidence to support the conviction, the court did state that the language of the alleged threat as follows: "I am warning you for the last time that you are not pulling my drivers over for no reason and arresting them . . . . You have a wife and family. You had better give some thought to that. You are gone a lot of nights. Where is your bedroom? I will be back."

n19 *Armstrong v Ellington (1970, WD Tenn) 312 F Supp 1119,* supra.

- - - - - - - - End Footnotes - - - - - - - -

In *Thomas v Commonwealth (1978, Ky App) 574 SW2d 903,* the court upheld the constitutionality of a terroristic threatening statute and upheld the sufficiency of the evidence to convict the accused based on evidence that the accused, after his wife told him that he could not live in her house, stated to the wife that she and her daughter were going to get him in trouble with his probation officer and that "I will cut both our heads off before I go back." Holding that the evidence presented by the prosecution established the offense of terroristic threatening and that the verdict was based on substantial evidence, the court rejected the contention that the statute in question was unconstitutionally vague and overbroad. The statute in question provided, in pertinent parts, that a person is guilty of terroristic threatening when he threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person. The court held that the statute was not unconstitutionally vague and overbroad since the conduct proscribed, threatening to commit a crime likely to result in death or serious physical injury, was clearly without constitutional protection under the First Amendment, and since the language of the statute was sufficiently explicit to put the average citizen on notice as to the nature of the conduct so proscribed. Rejecting as ludicrous the assertion that the statute was defective because it did not require the accused's threat to be serious or that it did not require an intent to actually convey a serious threat, the court stated that the statute did not apply in the case of idle talk or jesting. The court observed that the accused's intent to commit the crime of terroristic threatening can be plainly inferred from the accused's own words and the circumstances surrounding them, the court noting that all the statute requires is that the accused threaten to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person. Noting that the jury believed that the testimony of the wife that the accused had threatened to cut her head off, and that the threat was not made in jest, the court stated that the intent to commit the offense was implied from the accused's own words. Rejecting the contention that the threats allegedly made by him were at most conditional in nature and did not reveal a present intention to do her bodily injury, the court, noting that a statement of an intention to inflict harm on another, conditioned upon a future happening, would tend to generate fear in direct proportion to the likelihood that the condition would be fulfilled, and stated that the mere fact that the harm is made upon a condition, such as the accused getting into trouble with his probation officer, does not prevent it from being anything less than a real threat. The court also pointed out that the statute did not require that the victim be placed in reasonable apprehension of immediate injury.

However, a terroristic threat statute was held unconstitutional as impermissibly vague in *State v Hamilton (1983) 215 Neb 694, 340 NW2d 397*, where the statute provided that a person commits terroristic threats if he threatens to commit any crime likely to result in death or serious physical injury to another person or likely to result in substantial property damage to another person. The court found two areas of uncertainty, one in the lack of a definition of what constitutes a threat, and the other in the use of the term "likely." With respect to absence of a definition or description of a threat, the court asked whether a threat must be made in seriousness, or could be made by a joke, and what effect the intended victim's heedlessness to the threat would make, or what would be the effect of a threat neither heard nor received by the intended victim. The court said that the term "likely" has inherent problems in a criminal statute, and asked whether a very small individual's threat to punch a much larger person would be a threat. It also said that the Model Penal Code provisions as to terroristic threats were "fairly definite, and not speculative as is the statute in question." To the same effect is *State v Fisher (1984) 216 Neb 530, 343 NW2d 772*, later proceeding *218 Neb 479, 356 NW2d 880*.

The Pennsylvania terroristic threats statute, in outlawing threats to commit violent crimes with intent to terrorize another, was held in *Commonwealth v Bunting (1981) 284 Pa Super 444, 426 A2d 130*, to be not unconstitutionally vague, but to be sufficiently clear to give notice to a person of average intelligence of conduct forbidden by the statute.

The Pennsylvania terroristic threats statute was held constitutional in *Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180*, as against contentions that it was unconstitutionally vague and infringed upon the accused's right of free speech. The statute defined terroristic threats as threatening to commit any crime of violence with intent to terrorize another. The court quoted with approval from another opinion stating that the term "terrorize" is sufficiently precise to inform the average reader of the type of conduct referred to. The court also said that the state had a sufficient interest in the welfare of its citizens to enable it to proscribe terroristic threats even though expression may be involved.

A Pennsylvania statute establishing the new crime of terroristic threats, and defining a terroristic threat as a threat to commit any crime of violence with intent to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience was held to be unconstitutional on its face in *Commonwealth v Howell (1976) 1 Pa D & C3d 644*. The court observed that especially in a situation such as this, where the legislature has created an offense which was not a crime at common law, a penal statute must lay down a reasonably ascertainable standard of guilt, which must be sufficiently explicit to enable a citizen to ascertain with a fair degree of precision what acts it intends to prohibit, and therefore what conduct on his part will render him liable to its penalties. The court declared that it was the phrase "serious public inconvenience" in particular which was so vague as to make void the entire section. Noting a comment in an earlier draft giving an example of "serious public alarm or inconvenience," as an anonymous telephone call threatening to bomb a theater or airplane, the court stated that such calls are easily included within the provision concerning threats "to commit any crime of

violence with intent to . . . cause evacuation of a building, place of assembly, or facility of public transportation." Stating that the additional clause penalizing threats which in the eyes of policemen, judges, or juries are intended to cause "serious public inconvenience" opens this section to exactly that abuse which is forbidden by the due process clause, the court stated that enforcement of this section without a clear and explicit definition of what is proscribed can only result in arbitrary and discriminatory enforcement. Observing that to attempt to enforce this statute would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the courts and jury, and that all are entitled to be informed as to what the state commands or forbids, the court stated that the statute failed to so inform on its face, and since neither court interpretation nor legislative history supplied the missing definition, the statute was unconstitutional on its face.

The Pennsylvania terrorist threat statute, which is based on the American Law Institute's Model Code, was held constitutional in *Commonwealth v Perry (1978) 9 Pa D & C3d 13,* as against contentions that its vagueness on its face and as applied to the accused violated the due process provisions of the federal and state constitutions. The accused, a prison inmate, threatened to shoot one prison officer and to get his family, and called another officer "a fuckin' punk pussy" and said that "if he saw him on the street he'd fuck him up." The statutory language in question was that defining the offense as threatening to commit any crime of violence with intent to terrorize another. The court said that the word "terrorize" describes a type of activity with sufficient precision to put a person on notice; and that the evidence showed that the accused threatened to commit the crimes of simple or aggravated assault upon the two corrections officers, and that he intended to terrorize the officers.

Terroristic threat statute that proscribed, inter alia, threatening to commit violent felony with intent to cause serious public inconvenience, or in reckless disregard of risk of causing such inconvenience, was not unconstitutionally vague; in case of defendant's charged conduct, which was imminent bomb threat directed at nursing home, person of ordinary intelligence would be aware that serious public inconvenience, such as evacuation of nursing home's elderly patients, could occur and, therefore, also understand that his conduct violated statute. *McCone v State (1993, Wyo) 866 P2d 740,* reh den (Wyo) *1994 Wyo LEXIS 16.*

[*5] Overlaps with other statutes

In the following cases the courts rejected an argument that a terroristic threat statute was unconstitutional because of its alleged overlap with a criminal assault statute.

See *Allen v State (1988, Alaska App) 759 P2d 541,* § 4.

A felony terroristic threatening statute was held constitutional in *Warren v State (1981) 272 Ark 231, 613 SW2d 97,* despite the accused's argument that as applied to him the terroristic threatening statute overlapped the misdemeanor assault statute. While two individuals were grading a road, the accused came out of some adjoining woods, armed with a rifle, pointed his rifle at them, and threatened to shoot one of them, and threatened to shoot at the grader if they

did not raise the blade. The accused apparently believed that the grader was on his land. The court rejected the accused's argument that terroristic threatening, unlike assault, involved conduct causing a prolonged state of fear. The court said that the terroristic threatening statute had no language requiring terrorizing over a prolonged period of time; that the mere overlapping of statutory provisions does not render a statute unconstitutional; and that the evidence was sufficient to sustain the guilty verdict, because there was substantial evidence that the accused, while armed with a rifle, threatened to shoot both prosecuting witnesses, and intended to cause, and did cause, both of them to fear for their lives.

In *Lanthrip v State (1975) 235 Ga 10, 218 SE2d 771,* the court rejected the contention that the language of the statute was so broad that it conflicted with the commission of the offense of simple assault, the court stating that the communication of a terroristic threat is not punishable under the simple assault statute, and that one may be guilty of simple assault without violating the terroristic threats statute. Holding that the indictment sufficiently described the offense charged so that the trial court properly overruled the accused's demurrers to the indictment, the court pointed out that the evidence in the case authorized the jury to believe that the accused communicated terroristic threats to his wife and his sister-in-law to kill each of them with a gun, and that the accused had also choked his wife in a fit of temper, observing that the circumstances of the threats considered by the jury clearly permitted a finding that the crime of violence threatened in the case was the crime of murder. Thus, the court said, in affirming the judgment of conviction, the trial court did not err in failing, on its own motion, to give the jury instructions defining the crime of murder, since it was not necessary for the prosecution to prove the elements of murder in order to prove the crime of terroristic threats alleged in the indictment. The court stated that it did not reach the question as to the legal problem encountered when there is a conviction of terroristic threats and assault or battery involving essentially the same conduct with one victim, despite its statement that the communication of a terrorist threat is not punishable under the simple assault statute and that one may be guilty of simple assault without violating the terroristic threats statute.

See State v Willett (1989) 233 Neb 243, 444 NW2d 672, § 14[a].

III. Form of threat

[*6] Generally

In the following cases the courts stated that under a terroristic threat or terroristic threatening statute, a threat need not take any particular form or be expressed in any particular words, and may be made by innuendo or suggestion, and that the words uttered will not be considered in a vacuum but rather in light of all the circumstances.

Notwithstanding that terroristic threat statute was enacted as part of omnibus legislation aimed at youth gang activity, statute did not require that terroristic threats be made as part of gang activity. *In re Ge M. (1991, 5th Dist) 226 Cal App 3d 1519, 277 Cal Rptr 554,* 91 CDOS 758, 91 Daily Journal DAR 1006.

"Immediate prospect of execution" of threat within meaning of terrorist threat statute refers to that degree of seriousness and imminence which is understood by victim to be attached to future prospect of threat being carried out, should any conditions not be met. West's Ann. Cal. Penal Code § 422; *People v. Melhado, 60 Cal. App. 4th 1529, 70 Cal. Rptr. 2d 878 (1st Dist. 1998).*

See *Jordan v State (1994) 214 Ga App 346, 447 SE2d 341, 94* Fulton County D R 2774, § 14[a].

Thus, in *State v Knight (1976) 219 Kan 863, 549 P2d 1397,* a prosecution for communicating terroristic threats, the court said that a threat otherwise coming within the purview of the statute need not, unless the statute expressly so requires, be in any particular form or in any particular words, and may be made by innuendo or suggestion.

In *Commonwealth v Griffin (1983) 310 Pa Super 39, 456 A2d 171,* a terroristic threat prosecution, the court said that the accused's statement should not be read in a vacuum but rather in light of the surrounding circumstances. To like effect is *Commonwealth v Lumpkins (1984) 324 Pa Super 8, 471 A2d 96.*

"To retaliate," within meaning of statute making it a crime to threaten judge with intent to interfere with performance of judge's official duties or intent to retaliate against judge for performance of official duties, does not connote some retributive physical violence; rather, it contemplates simple concept of "pay back." U.C.A.1953, 76-8-316(1). *State v. Fixel, 945 P.2d 149 (Utah Ct. App. 1997).*

[*7] Solitary threats

In the following cases the courts held or recognized that a single threat may be sufficient to constitute a violation of a state criminal terroristic threat statute.

A criminal defendant's shouting at a detective-witness against him, as the detective left the stand after reading an incriminating statement which the detective testified that the defendant had given to him, "That confession is going to cost you one of your fuckin kids, punk," was held to constitute a terroristic threat in *Commonwealth v Ferrer (1980) 283 Pa Super 21, 423 A2d 423,* as against the accused's argument that the evidence was insufficient to make out a crime. The court said that the evidence plainly supported an inference beyond a reasonable doubt that the accused threatened to murder one of the detective's children, thereby threatening to commit a crime of violence. The court also found a sufficient intent to terrorize or reckless disregard of the risk of causing terror, because although there was only one threat, its nature and the surrounding circumstances sufficiently established a settled purpose to terrorize rather than a spur of the moment threat resulting from transitory anger.

And, in *Commonwealth v Chance (1983) 312 Pa Super 435, 458 A2d 1371,* a terroristic threat prosecution involving the accused's pointing a gun at a young couple in a parked car, and telling them not to talk or he would shoot, the court said that even a single verbal threat may be made in such terms or circumstances as to support the inference that the actor intended to terrorize or coerce.

Conviction of making terroristic threat was supported by evidence that defendant, who thought cashier had gestured to suggest that he was crazy and should shoot himself, returned to store next day and told coworker to give message to cashier that "when I decide to do this, it will be on her shift and there will be lots go down." Coworker appeared visibly shaken when trooper arrived at store to investigate, and cashier appeared frightened when summoned to store and told of defendant's remarks. *Commonwealth v Campbell (1993, Pa Super) 625 A2d 1215.*

[*8] Conditional threats

In a number of cases the courts have held or stated that a person may violate a terroristic threat or terroristic threatening statute by uttering a threat that is conditional in nature. *Ark-Richards v State (1979, App) 266 Ark 733, 585 SW2d 375. Del-Bilinski v State (1983, Del Sup) 462 A2d 409, 45 ALR4th 941. Ga-Mann v State (1979) 148 Ga App 681, 252 SE2d 510. Kan-State v Dubish (1984) 234 Kan 708, 675 P2d 877. Ky-Thomas v Commonwealth (1978, Ky App) 574 SW2d 903. Pa-Commonwealth v Chance (1983) 312 Pa Super 435, 458 A2d 1371. Tex-Jarrell v State (1976, Tex Crim) 537 SW2d 255.*

Defendant's statement to her former attorney, that, if he failed to assist her in creating "Universe Reform Party" she would hire gang members to have him killed, constituted terroristic threat, despite conditional nature of threat, since threat conveyed gravity of purpose and immediate prospect of execution. *People v Stanfield (1995, 2nd Dist) 32 Cal App 4th 1152, 38 Cal Rptr 2d 328,* 95 CDOS 1536, 95 Daily Journal DAR 2613.

No error arose from trial court's modification of standard instruction on elements of crime of making terrorist threat to add statement that conditional threats would be true threats if context reasonably conveyed to victim that they were intended, which merely made clear that jury was to consider significance accorded defendant's statement by victim. West's Ann. Cal. Penal Code § 422. *People v. Melhado, 60 Cal. App. 4th 1529, 70 Cal. Rptr. 2d 878 (1st Dist. 1998).*

The argument that terroristic threatening requires an unconditional threat was rejected in *Bilinski v State (1983, Del Sup) 462 A2d 409, 41* ALR4th holding that terroristic threatening was a lesser-included offense of attempted extortion. The defendant argued that terroristic threatening could not be a lesser-included offense of attempted extortion, because extortion required a conditional threat and terroristic threatening required an unconditional threat. The court said that the statutes defining the respective offenses "do not qualify the act or mental state required for the commission of each offense as a conditional or unconditional threat," and that "we may not read those requirements into the unambiguous language of the Statutes."

There was insufficient evidence to convict defendant for crime of corruption by threat against public servant, in absence of showing that defendant, who allegedly told deputy to leave defendant's property or defendant would kill him, did anything to corruptly influence deputy, who apparently entered defendant's property without valid intent to arrest, had no warrant or other legal process to serve, and who was not otherwise on property with legal right or authority. *Bragg v State (1985, Fla App D5) 475 So 2d 1255, 10 FLW 1972.*

However, in *Wiggins v State (1984) 171 Ga App 358, 319 SE2d 528,* the court stated, in reversing a terroristic threat conviction, that a number of factors, including the conditional nature of the accused's threat, created a reasonable doubt as to the accused's guilt.

[*9] Threats of action by third persons

A terroristic threat statute has been held violated by threats otherwise denounced by the statute even though the threats are that some third person will carry out the threatened acts. *State v Knight (1976) 219 Kan 863, 549 P2d 1397; State v Dubish (1984) 234 Kan 708, 675 P2d 877.*

Evidence, in a two-count prosecution for communicating terroristic threats, that the accused, a minister, stated to a female parishioner in an angry and hateful voice during a telephone conversation that his wife had purchased a gun and was going to kill her, and that after the victim told the accused to leave her mother alone because she had a heart condition and he was going to cause the mother to have a heart attack, the accused stated "yes, I'll kill your mother to get back at you," and the accused used various curse words during the conversation, was held to be sufficient to sustain the accused's conviction of one of the two counts of the complaint in *State v Knight (1976) 219 Kan 863, 549 P2d 1397,* though the accused did not himself make the threat, but communicated the threat allegedly made by his wife. The accused was also charged with communicating a terroristic threat in a telephone conversation with the victim's father, but was acquitted of that charge. Noting that a statute defined a terroristic threat as any threat to commit violence communicated with intent to terrorize another, the court rejected the accused's contention that the information was jurisdictionally defective and fatally insufficient because it did not charge the accused with himself threatening to commit violence, stating that it is not essential that the accused threatened to do the acts mentioned in the communication himself, but it is sufficient for the accused to convey the threat of some other person to do the forbidden acts if the accused sends the communications with the specific intent to terrorize another which is forbidden by the statute. Noting that any other holding would immunize the terrorists with sufficient intelligence to avoid making a personal threat, the court noted the accused's contention that he was only warning others of his wife's purchase of a gun, and not attempting to terrorize others, the court, pointing out that the main elements of the offense of terroristic threat are threats communicated with a specific intent to terrorize others, stated that the trial court adequately instructed the jury on the intent to terrorize, and that sufficient evidence was presented to the jury concerning the circumstances under which the alleged threat was uttered and the relations between the accused and the victim from which the jury could reasonably have drawn an inference of guilt. The court stated that a threat otherwise coming within the purview of a statute need not, unless the statute expressly so requires, be in any particular form or in any particular words, and it may be made by innuendo or suggestion, and need not be made directly to the intended victim.

An estranged husband was held properly convicted of making a terroristic threat to his estranged wife in *State v Dubish (1984) 234 Kan 708, 675 P2d 877,* when he threatened to send two men to her house to harm her if she called police after he had victimized her with aggravated kidnapping and aggravated battery.

[*10] Idle threats

In the following cases the courts recognized that one does not violate a terroristic threat or terroristic threatening statute by making idle talk or jests which do not have a reasonable tendency to create apprehension that the speaker will act according to the threat.

In *Thomas v Commonwealth (1978, Ky App) 574 SW2d 903,* upholding the constitutionality of a terroristic threatening statute, the court rejected as ludicrous the accused's argument that the statute was defective because it did not require the accused's threat to be serious or did not require an intent to actually convey a serious threat. The court said that the statute did not apply in the case of idle talk or jesting.

In *State v Schweppe (1975) 306 Minn 395, 237 NW2d 609,* upholding a terroristic threat conviction, the court said that the question whether a given statement is a threat turns on whether the communication in its context would have a reasonable tendency to create apprehension that its originator will act according to its tenor.

[*11] Threats without overt acts

In several cases the courts have expressly stated that the offense of terroristic threat or terroristic threatening is completed when the threat is uttered with the requisite intent, so that no further act is necessary to constitute the offense.

A conviction of terroristic threatening was affirmed in *Allen v State (1982, Del Sup) 453 A2d 1166,* in which the court said that the crime is complete when the actor threatens a crime, the commission of which would reasonably entail death or serious physical injury, and that it is immaterial whether the threatened act is completed.

In *Lanthrip v State (1975) 235 Ga 10, 218 SE2d 771,* in which the court upheld the constitutionality of a terroristic threat statute, the court explained that the offense is consummated by the communication of the threat to another person for the purpose of terrorizing that person.

In *Wilson v State (1979) 151 Ga App 501, 260 SE2d 527,* the court said that the trial court's jury instructions stated a correct principle of law in declaring that when the communication of a threat is done to terrorize another, the crime of terroristic threats is complete.

Similarly, in *Boone v State (1980) 155 Ga App 937, 274 SE2d 49,* the court declared that "the crime of terroristic threats focuses solely on the conduct of the accused and is completed when the threat is communicated to the victim with the intent to terrorize."

See *State v. Rodriguez, 6 Neb. App. 67, 569 N.W.2d 686 (1997),* review overruled, (Mar. 18, 1998), §§ 29, 30.

Crime of making terroristic threats requires that perpetrator have intent to terrorize victim as result of threat or reckless disregard of risk of causing such terror, but does not require intent to execute threats made or that recipient of threat be terrorized. Neb. Rev. St. § 28-311.01. *State v.*

Rodriguez, 6 Neb. App. 67, 569 N.W.2d 686 (1997), review overruled, (Mar. 18, 1998).

[*12] Threats beyond threatener's present ability to carry out

The courts have held or recognized in a number of cases that a threatener's present inability to carry out his or her threats does not in itself remove the threats from the purview of terroristic threat or terroristic threatening statutes. *Ga-Moss v State (1976) 139 Ga App 136, 228 SE2d 30. Pa-Commonwealth v Ashford (1979) 268 Pa Super 225, 407 A2d 1328; Commonwealth v Kidd (1982) 296 Pa Super 393, 442 A2d 826; Commonwealth v Speller (1983) 311 Pa Super 569, 459 A2d 198; Commonwealth v Chance (1983) 312 Pa Super 435, 458 A2d 1371. Tex-Jarrell v State (1976, Tex Crim) 537 SW2d 255; Dues v State (1982, Tex Crim) 634 SW2d 304.*

In *Commonwealth v Ashford (1979) 268 Pa Super 225, 407 A2d 1328*, the court upheld the accused's conviction of the offense of terroristic threats under evidence that after being arrested and placed in a police car, the accused began threatening the officers, claiming that he was going to kill them and their families and they could not do anything to stop him, and that the accused made an effort to observe the nameplates worn by the officers and began repeating the threats using their first names, and continued to repeat his threats at least 20 times. The officers testified that they had been threatened on other occasions during the course of their police work, but that most of such incidents involved defendants who were intoxicated and their threats could be dismissed as mere bragging. The officers stated that in the present case the accused was not intoxicated and that they had never been threatened in a manner whereby the arrestee expressed an intent to "hunt" them down and kill their families, the officers testifying that they were genuinely concerned when the accused would be released on bail and whether he would attempt to fulfill his threats. Observing that the statute provided that a person commits the crime of terroristic threats if he threatens to commit any crime of violence with intent to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience, the court stated that the required elements of the offense, for the purposes of the instant appeal, are a threat to commit a crime of violence and that the threat was communicated with an intent to terrorize. Noting that the accused conceded that he threatened to perpetrate a crime of violence, but contended that the evidence was insufficient to establish beyond a reasonable doubt that the threat was made with an intent to terrorize, the court, noting that the accused's words carried the import of a serious assassin and not the braggadocio of an intoxicated bully, rejected the accused's contention and stated that the evidence supported the jury's conclusion that the accused made the threats with the requisite intent to terrorize, and that his threats were more than mere spur of the moment threats which resulted from anger. Rejecting the contention that because he was handcuffed and did not possess the means to immediately carry out his threats, the offense was not established, the court observed that the statute did not require the present ability to inflict harm as an element of the offense, observing that the statute encompasses threats of both present and future harm if perpetrated with the intent to terrorize the victims. Holding that the accused's threats to extract vengeance in futuro were sufficient to establish the offense of terroristic threats, the court stated that it would not consider the accused's contention that the statute was unconstitutionally vague, since the claim was not presented in the lower court and therefore had not been

preserved and could not be raised for the first time on appeal.

A masked man who wielded a .22 caliber pistol at a young man and a young woman embracing in a parked car, and told them, while pointing the gun at them, not to talk or he would shoot, was held properly convicted of terroristic threats in *Commonwealth v Chance (1983) 312 Pa Super 435, 458 A2d 1371,* although in a subsequent struggle over the gun the young man heard the pistol click several times and thus might have concluded that it was unloaded or inoperative. The court said that even a single verbal threat may be made in such terms or circumstances as to support the inference that the actor intended to terrorize or coerce; that the present inability to inflict the threatened harm is not a sine qua non of a conviction of making terroristic threats; and that the evidence was sufficient to sustain the conviction.

Upon evidence that the accused rang the doorbell of the home of the victim, a 13-year-old girl, and was refused permission to enter the home, and later returned and told her that if she called the police he would kill her, and repeated about 10 times that he would kill her, it was held, in *Jarrell v State (1976, Tex Crim) 537 SW2d 255,* that the evidence was sufficient to establish that the accused had violated the terroristic threat statute, and that his revocation of probation, based upon the fact that he committed an offense within 2 years after his conviction of the offense of retaliation, was justified. The victim testified that the accused acted "strange," and stated that she was "scared" and "afraid." The terroristic threat statute provided, in pertinent part, that a person commits an offense if he threatens to commit an offense involving violence to any person or property with intent to place any person in fear of imminent serious bodily injury. Rejecting the accused's contention that the evidence was insufficient to support the court's findings, in that the threat was not coupled with the ability to carry out the threat, the accused pointing to evidence that he was talking to the complainant through a window and that the door to the house was locked, and urging that he was incapable of carrying out the threat because of a deformed arm, the court, noting that the essence of the offense is the desired reaction of the listener, regardless of whether the threat is real, the court concluded that capability to carry out the threat is not an essential element of the offense of making a terroristic threat.

IV. Nature of threat

[*13] "Serious injury" requirement

Under a terroristic threatening statute denouncing the communication of a threat to cause "serious injury," the term "serious injury" has been held to mean physical injury.

Defendant's having threatened to punch pregnant woman hard enough to kill her full-term fetus carried with it threat to cause serious physical injury to woman personally, within meaning of statute defining terroristic threatening as threat to cause death or serious physical injury. *Hagen v State (1994) 47 Ark App 137, 886 SW2d 889.*

The term "serious injury" in a terroristic threatening statute defining the offense as threatening to commit any crime likely to result in death or in serious injury to person or property was held equitable with "physical injury"