In *Bilinski v State (1983, Del Sup) 462 A2d 409, 45 ALR4th 941*, holding that terroristic threatening was a lesser-included offense of attempted extortion. The defense argued that terroristic threatening could not be a lesser-included offense, because the extortion statute required only "physical injury" as an element while the terroristic threatening statute required "serious injury." In rejecting this argument, the court said that "physical injury" sufficient to "instill" fear, as those terms were used in the extortion statute, "must be construed to equate the commonly accepted meaning of the term 'serious injury,' as that term is used in the Terroristic Threatening Statute."

See *State v. Murphy, 545 N.W.2d 909 (Minn. 1996)*, related reference, *1997 WL 698423 (Minn. Ct. App. 1997)*, § 25[b].

[*14] Threat to kill

[*14a] Generally

In a large number of cases it has been held or stated that a terroristic threat or terroristic threatening statute includes threats to kill. *Ga-Lanthrip v State (1975) 235 Ga 10, 218 SE2d 771; Echols v State (1975) 134 Ga App 216, 213 SE2d 907; Moss v State (1976) 139 Ga App 136, 228 SE2d 30; Hornsby v State (1976) 139 Ga App 254, 228 SE2d 152; Cagle v State (1977) 141 Ga App 392, 233 SE2d 485; Usher v State (1977) 143 Ga App 843, 240 SE2d 214; Aufderheide v State (1978) 144 Ga App 877, 242 SE2d 758; Lewis v State (1978) 147 Ga App 794, 250 SE2d 522; Moss v State (1978) 148 Ga App 459, 251 SE2d 374; Mann v State (1979) 148 Ga App 681, 252 SE2d 510; Wilson v State (1979) 151 Ga App 501, 260 SE2d 527; Mason v State (1980) 154 Ga App 447, 268 SE2d 688; Jones v State (1981) 160 Ga App 140, 286 SE2d 488. Kan-State v Torline (1974) 215 Kan 539, 527 P2d 994; State v Knight (1976) 219 Kan 863, 549 P2d 1397; Findlay v State (1984) 235 Kan 462, 681 P2d 20. Ky-Thomas v Commonwealth (1978, Ky App) 574 SW2d 903. Minn-State v Schweppe (1975) 306 Minn 395, 237 NW2d 609. Pa-Commonwealth v Ferrer (1980) 283 Pa Super 21, 423 A2d 423; Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180; Commonwealth v Lumpkins (1984) 324 Pa Super 8, 471 A2d 96. Tex-Jarrell v State (1976, Tex Crim) 537 SW2d 255.*

See *Hagen v State (1994) 47 Ark App 137, 886 SW2d 889*, § 13.

Substantial evidence supported defendant's conviction for terrorist threats where victim knew that defendant had made practice of looking inside victim's home and had reported defendant's conduct to police on previous occasions, defendant threatened to kill victim and her daughter while pointing gun at victim, and victim telephoned police, who arrested defendant in about 15 minutes; 15 minutes of fear of a defendant who was armed, mobile, and large, and who had threatened to kill, was more than sufficient to constitute "sustained" fear for purposes of that element of terrorist-threats crime. *People v Allen (1995, 2nd Dist) 33 Cal App 4th 1149, 40 Cal Rptr 2d 7*, 95 CDOS 2458, 95 Daily Journal DAR 4215, review den (Jun 14, 1995).

See *Bragg v State (1985, Fla App D5) 475 So 2d 1255, 10 FLW 1972*, § 8.

Evidence that the accused, after being arrested for creating a disturbance at a racetrack and being lodged in the jail, made threats to kill some of the police officers present at the time was held to be sufficient to sustain the accused's conviction for making terroristic threats to one of the policemen in

Moss v State (1976) 139 Ga App 136, 228 SE2d 30. Rejecting the contention that the evidence was insufficient because the police were armed and the accused was not armed, the court stated that the evidence was sufficient even though there was no direct evidence that the threats were made for the purpose of terrorizing another, observing that the circumstances surrounding the threats were sufficient for a jury to find the threats were made for such a purpose. Affirming the judgment of conviction, the court rejected the contention that the prosecutor's opening statement that on the occasion in question several such threats were made to other police persons present did not place the accused's character in issue so as to require a reversal on the grounds that this was a disclosure to the jury of separate crimes from that charged in the indictment.

The testimony of the complainant that the accused threatened to "blow my head off and burn down both of my houses," and the testimony of another witness that she heard the accused "cussing my mother and threatening to kill her and threatening to burn her houses down," was held to be sufficient to justify the accused's conviction for making terroristic threats in *Cagle v State (1977) 141 Ga App 392, 233 SE2d 485,* the court holding that the testimony of the complainant had been sufficiently corroborated. Noting that the constitutionality of the terroristic threats statute had been upheld, the court rejected the accused's objections to several elements of the trial judge's charge to the jury, stating that while the instructions were not perfect, when construed as a whole the charge was complete, fair, and not confusing. Affirming the judgment of conviction, the court also rejected the accused's contention that the trial judge failed to charge without request several general legal principles dealing with the burden of proof and reasonable doubt, the court stating that the charge as given was complete and included adequate instruction on the legal principles involved in a criminal case, and noting that where the court's instructions as a whole embraced substantially a principle of which the accused contends the court erred in failing to charge, there is no error requiring a new trial, particularly where no proper request is filed.

Aggravated assault and terroristic threat convictions of "Outlaw Motorcycle Club" members were affirmed in *Lewis v State (1978) 147 Ga App 794, 250 SE2d 522,* on evidence that the three defendants, each armed with a firearm, went to a trailer park to settle a dispute; that during a shootout, a motorcycle club member was shot and killed by a trailer occupant; that two of the defendants fired shots into the trailer; and that some of the defendants uttered threats to kill. The court said that this evidence was more than sufficient to sustain the guilty verdicts.

A conviction for the crime of terroristic threats, based upon the testimony of the victim, a police officer, that the accused threatened to kill him, that he had $ 1,000 and was going to pay somebody to do it if he did not personally do it, and that the officer would never see his children grow up to play football, was upheld in *Moss v State (1978) 148 Ga App 459, 251 SE2d 374.* A second officer testified that the accused stated to the victim that he would not live to see his kids play football this season, that there were people raising money to kill the police and that he had $ 1,000 and that he would probably join such people. Noting that the crime of terroristic threats requires corroboration of the testimony of the victim, the court stated that the evidence was sufficient to enable a jury to find that a threat was made against the officer and that there was sufficient corroboration. Noting that it is not essential for corroboration that the victim's testimony be quoted word for word, the court

stated that slight corroboration may be sufficient and the question of corroboration is one solely for the jury, assuming that there is any evidence of corroboration. Holding that the arresting officer's testimony that the accused appeared to be driving under the influence of some kind of drug or intoxicant was admissible to explain the officer's conduct in following the accused's automobile, the court also upheld the admissibility of testimony concerning a subsequent threat to kill the arresting officer which was made immediately after the committal hearing, the court, noting that the second threat was not too remote and pointing out that corroboration of the second threat was not required, stated that while evidence that the accused has committed another wholly independent crime is generally irrelevant, the second threat was admissible in the present case for the purpose of showing motive, plan, or scheme.

In *Mann v State (1979) 148 Ga App 681, 252 SE2d 510,* evidence to the effect that the accused and a cohort forced their way into a trailer occupied by three men and a woman, that the cohort raped and sodomized the woman and all four victims were physically abused, and that upon leaving the trailer, the accused and the cohort both threatened to kill the four victims if they called the police, was held to be sufficient to sustain the accused's conviction for terroristic threats and other crimes. Upholding the admissibility of rebuttal testimony, after the accused denied ever having threatened anyone, to the effect that the accused, at a preliminary hearing, had again threatened two of the victims, the court stated that the relevancy of the testimony to show the accused's intent by terroristic threats to thwart successful prosecution for the criminal events which previously occurred, outweighed any jury prejudice which might have occurred, the court noting in addition that the introduction of the testimony was a valid means of impeachment.

In a brief opinion in *Mason v State (1980) 154 Ga App 447, 268 SE2d 688,* the court affirmed convictions of terroristic threats and simple battery on testimony that the defendant threatened to kill one police officer and subsequently struck that officer and another officer.

A terroristic threats conviction was affirmed in *Jones v State (1981) 160 Ga App 140, 286 SE2d 488,* wherein the accused stabbed another individual with a "skinning" knife, and when police arrived, remained near the bleeding victim, still holding the knife. When the police officers attempted to persuade him to surrender the knife, he made threats to kill them and restrained them from arresting him or aiding the victim, who went into serious shock from loss of blood, and ultimately died as a result of the knife wound.

Evidence supported conviction of defendant for making terroristic threats, where defendant told reporter he intended to kill judge who had found him in contempt and subsequently stood in entrance to court threatening judge. *Stephens v State (1985) 176 Ga App 187, 335 SE2d 473.*

Terroristic threat to defendant's sister that he would kill everything in house, which was followed by his approaching her with lamp in his hands, was corroborated by sister's recounting of his previous threat against her, that fact that moments later defendant used lamp in vicious assault on his mother, who had interceded to help sister, and by arresting officer's testimony that defendant had told him that he should have killed everyone in house. *Mitchell v State (1988) 187 Ga App 40, 369 SE2d 487.*

Evidence was sufficient to support defendant's conviction of offense of terroristic threat, where prior incidents between police officer and defendant clearly established pattern of animosity and hostility between them, and during course of pat-down search, defendant said to officer that officer had better get bulletproof vest for his head since "we got your 308s, your 9 millimeters, and your UZIs; we got it all." *Jordan v State (1994) 214 Ga App 346, 447 SE2d 341, 94* Fulton County D R 2774.

Defendant's telephoned threat to murder his wife was without doubt threat to commit "crime of violence" within meaning of statute governing offense of terroristic threats, and, particularly since defendant in his testimony acknowledged possibility that he had intended to intimidate his wife into returning their son to their residence, evidence was sufficient to prove defendant's requisite intent to terrorize. Though defendant's conduct might also have violated statute barring intimidation by phone call, prosecution, in absence of any allegation of reliance on unjustifiable standard, was free to select any violated statute as basis for prosecution. *State v Willett (1989) 233 Neb 243, 444 NW2d 672.*

See *State v Saltzman (1990) 235 Neb 964, 458 NW2d 239,* § 29.

The evidence of terroristic threats was held sufficient to support the accused's conviction in *Commonwealth v Green (1981) 287 Pa Super 220, 429 A2d 1180,* where the accused threatened to kill the victim and to blow his brains out with a gun. The record further indicated the victim's terror and described the accused's demeanor as "worse than a mad animal" and "like a wild animal," which evidence, the court said, established that the accused manifested an intent to terrorize the victim.

The evidence was also held sufficient to sustain a conviction of terroristic threats in *Commonwealth v Lumpkins (1984) 324 Pa Super 8, 471 A2d 96,* where the accused, upon being approached by police detectives who identified themselves and said that they would like to ask him a few questions, reached into his pocket and pulled out a handgun, and during the ensuring struggle, struck and kicked both detectives, finally grabbing one detective by the shirt, spinning him around and pointing a gun at his head. The other detective retreated to a nearby parked car. While holding the first detective hostage, the accused repeatedly threatened to kill both officers, indicated a desire to take the first detective with him to enable him to escape, and struck and kicked the officer several times. After a short period of time, the accused suddenly released the officer and ran, but was later apprehended. The court said that the elements of terroristic threats are: (1) a threat to commit a crime of violence, and (2) communication of such threat with intent to terrorize or with reckless disregard of causing such terror. It also said that statements alleged to constitute terroristic threats need not be considered in a vacuum, but rather should be looked at in the light of the surrounding circumstances. In this case, the court said, the conviction was clearly sustained by the threats to kill while pointing a revolver at the officers and inflicting bodily injury on the first detective.

Both quality and quantity of evidence supported conviction of defendant of terroristic threats when she extended arms and said, "I'm going to kill you, you f--king nigger," and then fired two shots at one black man and his friend, a

white 17-year-old male. *Commonwealth v Ferino (1994, Pa Super) 640 A2d 934,* digest op at (Pa Super) 17 PLW 324.

Defendant's telephone call to wife during bitter divorce and child custody dispute in which he stated, "I'm going to kill you, you bitch," was sufficient to support conviction of making terroristic threat, even though defendant's call within 30 minutes left message that wife would soon hear from his attorney; it was unnecessary that victim was actually placed in fear of imminent serious bodily injury, but rather that defendant intended to arouse fear of imminent injury, whether or not he had ability or intention to carry out threat. George v State (1992, Tex App Houston (1st Dist)) *841 SW2d 544,* petition for discretionary review gr (Apr 14, 1993).

[*14b] Statement that "I ought to kill you"

A statement that "I ought to kill you" has been held to violate a terroristic threat statute when the surrounding circumstances show that the statement was a threat to kill.

A bank robber's statement to the head teller, who refused to open the vault, that "I ought to kill you," was held to be a terroristic threat in *Commonwealth v Griffin (1983) 310 Pa Super 39, 456 A2d 171,* because he said it while kicking her and brandishing a firearm at her. The accused admitted that the information alleged sufficient facts to indicate that he uttered a statement with intent to terrorize, but he contended that the statement "I ought to kill you" is not a threat. The court said that the statement should not be read in a vacuum but rather in light of the surrounding circumstances. "We feel that the statement 'I ought to kill you,' made during the course of a robbery by someone brandishing a gun and kicking the person to whom the statement was made," the court said, "is sufficient to constitute a threat" under the terroristic threat statute.

[*15] Threat to shoot

In several cases a threat to shoot an individual has been held a threat proscribed by a terroristic threat or terroristic threatening statute. *Ark-Warren v State (1981) 272 Ark 231, 613 SW2d 97; Richards v State (1979, App) 266 Ark 733, 585 SW2d 375. Ga-Grant v State (1977) 141 Ga App 272, 233 SE2d 249; Simmons v State (1979) 149 Ga App 589, 254 SE2d 907; Boone v State (1980) 155 Ga App 937, 274 SE2d 49;* See *Medlin v State (1983) 168 Ga App 551, 309 SE2d 639. Pa-Commonwealth v Hardwick (1982) 299 Pa Super 362, 445 A2d 796; Commonwealth v Chance (1983) 312 Pa Super 435, 458 A2d 1371; Commonwealth v Perry (1978) 9 Pa D & C3d 13.*

See *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, § 3.

See *People v Allen (1995, 2nd Dist) 33 Cal App 4th 1149, 40 Cal Rptr 2d 7,* 95 CDOS 2458, 95 Daily Journal DAR 4215, review den (Jun 14, 1995), § 14[a].

In prosecution for making terroristic threat brought against Ku Klux Klan member who, during demonstration in black neighborhood, reached into his robe and said to neighborhood resident, "Get back, I'll shoot," disputed evidence

including defendant's possession of gun at prior Klan rallies, and his racist replies to inquiries about demonstration, was properly admitted to show defendant's terroristic intent. *Carver v State (1988) 258 Ga 385, 369 SE2d 471, 15 Media L R 1682.*

In *Grant v State (1977) 141 Ga App 272, 233 SE2d 249,* a prosecution for two counts of terroristic threats and criminal possession of an incendiary, in which the accused was acquitted of the two counts of terroristic threats but convicted for criminal possession of the incendiary, the court rejected the accused's contention that the trial court erred in failing to direct a verdict of acquittal on the charges alleging terroristic threats. The accused argued that a verdict of acquittal was demanded by the evidence, and that the refusal to enter a directed verdict permitted the jury to consider highly prejudicial evidence irrelevant to the incendiary possession charge, alleging that the prosecution inferred that the alleged Molotov cocktail was somehow connected to the threats, and the court's refusal prejudiced the accused by allowing the jury to consider evidence wholly unconnected with the charge of possession of an incendiary. A state's witness testified that the accused and two accomplices came to his house, looking for his wife's nephew, that they were unsuccessful in locating the nephew and told the witness that the nephew had robbed them of a certain amount of money. The state's witness was called on the telephone and told that the caller was "one of the guys out there earlier that day . . . they wanted their money back . . . somebody knows where [the nephew] lives and [they] are going to get him and [their] money back, whatever it takes . . . if we have to fill your house full of lead." The next day someone called again attempting to locate the nephew, and when the caller recognized that another person was listening in, that person being a policeman, the caller stated "Somebody is still listening in. We are just going to drop the conversation now and we will proceed with step number 3." The court observed that "step number 3" apparently involved two pistols and the incendiary device, as the accused and his accomplices were arrested by the police on stakeout duty at the home of the state's witness. Observing that it constitutes reversible error for the trial court to refuse to direct a verdict of acquittal where there is absolutely no conflict in the evidence and the verdict of acquittal is demanded as a matter of law, the court, affirming the judgment of conviction, stated that it was not error for the trial court to refuse to grant a directed verdict of acquittal in the present case.

In a land ownership dispute, a conviction of making terroristic threats was affirmed in *Simmons v State (1979) 149 Ga App 589, 254 SE2d 907,* as to an accused who approached the victim while the victim and another were plowing a field, displayed a rifle, and threatened to "blow [him] off the tractor" if he did not stop. The court said that the evidence was amply sufficient to convict the accused.

See *Medlin v State (1983) 168 Ga App 551, 309 SE2d 639,* a drug prosecution involving the validity of the drug-revealing search following the accused's arrest for making terroristic threats. The accused and a woman were sitting in the accused's truck in a motel parking lot when the motel security guard approached them, and after learning that they were not guests at the motel, asked them to leave. The accused replied, "It would take just one slug to put you down." The security guard reported this to a police officer who inquired of the accused whether he had a gun under the vehicle seat. The accused replied that he did, whereupon the police officer arrested him for making terroristic

threats, made a pat-down search revealing methaqualone tablets, and found cocaine in the truck. In upholding the search, the court said that the police officer had probable cause to believe that the accused had made terroristic threats.

See *State v Alston (1994, Hawaii) 865 P2d 157,* § 24.

[*16] Threat to stab

A threat to stab an individual has been a threat prohibited by a terroristic threat statute when the threat is made with the requisite criminal intent.

In *In Interest of H. (1981) 160 Ga App 100, 286 SE2d 65,* a juvenile court's adjudication of delinquency was affirmed on the ground that a rational trier of fact could reasonably have found beyond a reasonable doubt that the child committed the acts by reason of which he was alleged to be delinquent-aggravated assault and terroristic threats and acts-where there was evidence that the child stabbed the victim with a knife after having been ordered out of the victim's home, and threatened to stab another person who was present in the home.

[*17] Threat to rape

A threat to rape a female has been held to be a threat prohibited by a state criminal terroristic threat statute.

The accused's conduct in *Commonwealth v White (1975) 232 Pa Super 176, 335 A2d 436,* was held to constitute a threat to commit the crime of rape on an 8-year-old girl where the accused approached the girl while she was playing, placed his hand over her mouth, shone a flashlight on her face, carried her to the back of an abandoned house, told the girl that he was going to grab her, held her against a wall by her shoulders, pulled up her skirt about 6 inches, and fled when the girl called out to a passing neighbor that the accused wanted to kill her. In upholding the accused's conviction, the court said that it is immaterial that the accused was acquitted of attempted rape and statutory rape, because the offense was the threat itself and not the actual commission of the threatened crime.

[*18] Threat to assault

A threat to assault another has been held a threat denounced by state criminal terroristic threat statutes, when uttered with the requisite criminal intent. In *Interest of Doe (1982) 3 Hawaii App 325, 650 P2d 603* (threat to slap or punch); *Commonwealth v Holguin (1978) 254 Pa Super 295, 385 A2d 1346* (threat to assault); *Commonwealth v Perry (1978) 9 Pa D & C3d 13* (threat that if he saw victim on the street, he'd "fuck him up").

Upon evidence that the accused ran into a bar and pointed a firearm at various people, threatened to assault the owner when she attempted to call the police, pulled her up by her hair from a crouched position, and upon leaving the bar the accused shouted "We will be back with more guns," the accused's conviction for making terroristic threats was upheld in *Commonwealth v Holguin (1978) 254 Pa Super 295, 385 A2d 1346.* The statute under which the accused was prosecuted made it a misdemeanor to threaten 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 under the statute the Commonwealth must prove a threat to commit a crime of violence, and that such threat was communicated with an intent to terrorize, cause evacuation, cause serious public inconvenience, or with reckless disregard of the risk of causing terror or serious public inconvenience. Noting that a prior case n20 concentrating upon that part of the statute which criminalized a threat to commit violence made with intent to cause public inconvenience, had held that the statute offended federal constitutional guarantees of due process because it was too vague, the court stated that since the accused did not reiterate his due process challenge on appeal, it did not need to decide the constitutionality of the statute. Rejecting the accused's contention that the Commonwealth did not prove beyond a reasonable doubt that he had the requisite intent to terrorize the occupants of the bar, the court stated that despite the accused's claims that the bar patrons did not understand his actions to be threatening, the testimony of the bar owner and another witness amply demonstrated that everyone in the bar was petrified by the actions of the three men and the possibility of gunfire or aggravated assault.

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

n20 *Commonwealth v Howell (1976) 1 Pa D & C3d 644.*

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

[*19] Threat to harm

A threat to harm another person has been held to constitute a threat within the scope of a state criminal terroristic threat statute.

Thus, an estranged husband's statement to his estranged wife, that if she called the police he would send two men to her house to harm her was held to constitute a terroristic threat in *State v Dubish (1984) 234 Kan 708, 675 P2d 879.* The threat followed the husband's having victimized his wife with aggravated kidnapping and aggravated battery, and forcing her to look at herself in a mirror.

[*20] Threat to "get" victim

A threat to "get" another person has been held a violation of a terroristic threat statute as a threat to commit an offense involving violence to another person with intent to place the victim in fear of imminent serious bodily injury.

See *State v Saltzman (1990) 235 Neb 964, 458 NW2d 239,* § 29.

Conviction for terroristic threat was supported by evidence that defendant held blade of sword dangerously near victim while threatening to "get" victim, notwithstanding that defendant never elaborated what he meant by "get." *Commonwealth v Hudgens (1990) 400 Pa Super 79, 582 A2d 1352.*

In *Burrell v State (1976, Tex Crim) 541 SW2d 615,* it was held that the record supported the trial court's finding that the accused had committed the offense of terroristic threat so that the trial court did not err in revoking the

accused's probation, where the evidence disclosed that while the complainant was involved in an argument with a man outside of the complainant's restaurant the accused and his brother appeared and sided with the other man, the argument became heated and all three men made threats against the complainant, the complainant testifying that "the Burrell brothers said they would get me, period." The statute in question provided, in part, that a person commits an offense if he threatens to commit any 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 justify the court's finding, the court stated that the testimony of the complainant reflected that the accused did threaten to commit an offense involving violence to the complainant with intent to place him in fear of imminent serious bodily injury.

[*21] Statements of having done something

A statement of having done something in a building that is dangerous has been held a terroristic threat within the meaning of a state criminal terroristic threat statute.

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

In *Haas v State (1978) 146 Ga App 729, 247 SE2d 507,* cert den *440 US 922, 59 L Ed 2d 475, 99 S Ct 1249,* the court upheld the accused's conviction for possession of explosives and making terroristic threats. The evidence disclosed that the victim had informed a female acquaintance of the accused that the accused had perverted sexual standards, and that thereafter the accused sought to "do something" to the victim, and that the accused, in the presence of a third person, solicited a man to prepare a bomb and place it in the victim's restaurant. This person constructed such a device and pursuant to instructions allegedly given by the accused, placed the device in the restaurant. A blasting cap was deliberately left out of the bomb, since its purpose was only to scare the victim, and the person who made the bomb notified authorities of its presence, and it was located and removed after the restaurant and surrounding area had been evacuated. The accused's former wife testified that the accused called her on the telephone and warned her that he had done something in the victim's restaurant that was dangerous and cautioned her to stay away from the restaurant. Rejecting the contention that the trial court erroneously denied a motion for directed verdict at the end of the evidence, the court, noting that the evidence must be viewed in the light most favorable to the verdict rendered, stated that since there was at least some evidence to support the jury's verdict, it would not disturb the trial court's denial of the motion for directed verdict.

See *McCone v State (1993, Wyo) 866 P2d 740,* reh den (Wyo) *1994 Wyo LEXIS 16,* § 4.

V. Communication of threat

[*22] Telephoned threats

In several cases it has been held that a violation of a state criminal terroristic threat statute may be committed by telephoned threats. *Ga-Usher v State (1977) 143 Ga App 843; Wilson v State (1979) 151 Ga App 501, 260 SE2d 527.*

Kan-State v Torline (1974) 215 Kan 539, 527 P2d 994; State v Knight (1976) 219 Kan 863, 549 P2d 1397; Findlay v State (1984) 235 Kan 462, 681 P2d 20.

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

See *Konrad v State (1988, Alaska App) 763 P2d 1369* (citing annotation), § 4.

Telephoned murder threats were held sufficient to sustain a conviction of terroristic threats in *Usher v State (1977) 143 Ga App 843, 240 SE2d 214,* wherein the accused anonymously telephoned a married woman and threatened to have violent sex with her and to kill her, and to "take care of" her husband if he tried to intercede. The police traced the calls to the defendant's residence, and the defendant confessed to making the calls. In affirming the conviction, the court rejected the defendant's argument that since he threatened only by telephone, he could be convicted only of the misdemeanor offense of harassing telephone calls rather than the felony of terroristic threats. The court said that the mere fact that the threat is communicated by telephone cannot reduce a felonious threat to a misdemeanor.

In *Wilson v State (1979) 151 Ga App 501, 260 SE2d 527,* the court upheld the accused's conviction for the offense of terroristic threats based upon a threat to kill the complainant's child. The court rejected the accused's contention that a proper foundation was not laid for the admission of evidence pertaining to phone calls allegedly received by the complainant and her family, such that the complainant's testimony regarding such phone calls constituted inadmissible hearsay, the court noting that the complainant properly established the authenticity of the phone calls she personally received from the accused through her direct testimony of voice recognition, and pointing out that the complainant also testified, without identifying the caller, that her family received numerous phone calls, and stated that since this testimony was admissible to establish the fact of telephone harassment, it was not subject to exclusion as hearsay. Stating that the trial court's charge that when the communication of a threat is done to terrorize another, the crime of terroristic threats is complete, stated a correct principle of law, the court rejected the contention that the trial court erred in failing to charge the jury on the defense of coercion, stating that the accused had failed to produce any evidence to support his contention that his threat to kill the complainant's child was made under his fear of imminent death or great bodily injury. The court also rejected the accused's contention that the trial court erred in charging the jury that the state did not have to prove beyond a reasonable doubt the corroboration of the victim, observing that contrary to the accused's contention, the state is not required to support such testimony beyond a reasonable doubt.

Evidence that defendant, while complaining over telephone to bank employee about item erroneously charged to his account, became irate and threatened to "blow up" the bank "on a Sunday," and later admitted to district attorney that he had called in bomb threat because he was "very angry" at the bank was sufficient to support conviction for making a false statement involving a bomb threat. Code 1957, Art. 27, § 151A. *Moosavi v. State, 118 Md. App. 683, 703 A.2d 1302 (1998),* reconsideration denied, (Jan. 27, 1998) and cert. granted, *349 Md. 237, 707 A.2d 1330 (1998).*

See State v Saltzman (1990) 235 Neb 964, 458 NW2d 239, § 29.

Evidence that defendant placed 911 call and stated that there was bomb in retirement home was sufficient for jury to find that defendant threatened crime of violence against residents, and that it was communicated with intent to terrorize or with reckless disregard of risk of causing terror. *Commonwealth v Cancilla (1994, Pa Super) 649 A2d 991.*

See George v State (1992, Tex App Houston (1st Dist)) *841 SW2d 544*, petition for discretionary review gr (Apr 14, 1993), § 14[a].

[*23] Letter threats

A threat made by letter rather than in person has been held a violation of a state criminal terroristic threats statute.

Terroristic threats against a realtor because of his participation in the racial integration of the defendants' former neighborhood were found in *Neal v State (1979) 152 Ga App 270, 262 SE2d 561,* in which the realtor and his family received threatening letters, including an attempt to extort money in a cash demand letter received by the realtor. The letter senders identified themselves as the "lust avengers," and the letters were proved by a handwriting expert to have been written by the defendants. Without further describing the letters, the court found that the evidence supported the guilty verdict as to terroristic threats.

In prosecution for terroristic threat based on writing by father of student on disciplinary referral form, state's failure to present evidence excluding reasonable hypothesis of innocence that daughter might have acted independently in returning form to school resulted in failure of proof in regard to several elements of crime charged and should have precluded jury's return of guilty verdict. *Cooley v State (1995) 219 Ga App 176, 464 SE2d 619, 95* Fulton County D R 3710, reconsideration den (Nov 29, 1995).

[*24] Threats communicated to third persons

In several cases it has been held or recognized that one may violate a state criminal terroristic threat statute by making a threat concerning the victim to a third person, if the threat was communicated in such a way as to support the inference that the speaker intended or expected it to be conveyed to the victim. *Ark-Richards v State (1979, App) 266 Ark 733, 585 SW2d 375. Ga-Haas v State (1978) 146 Ga App 729, 247 SE2d 507,* cert den *440 US 922, 59 L Ed 2d 475, 99 S Ct 1249; Wiggins v State (1984) 171 Ga App 358, 319 SE2d 528. Minn-State v Schweppe (1975) 306 Minn 395, 237 NW2d 609.*

Under evidence that the accused, a former railroad employee, came upon the railroad premises and insisted he was going to work the job the victim was preparing to work on that day, that the accused asked the victim to fight, that he had a rifle with him in his automobile and that after the victim left the presence of the accused, the accused took a rifle from the vehicle, cocked it, inserted a shell into the chamber, and told a railroad employee, "You'd better get that s.b. (sic) out of here or I'm going to shoot him," referring to the victim, and that the threat was promptly communicated to the victim by another railroad employee, and that the victim was frightened, concerned for the safety of his family, and left his job for the day, it was held, in *Richards v State*

(1979, App) 266 Ark 733, 585 SW2d 375, that the evidence, while conflicting, was sufficient to support the accused's conviction for making a terroristic threat. The statute in question provided that a person commits the offense of terroristic threatening if with the purpose of terrorizing another person he threatens to cause death or serious physical injury or substantial property damage to another person. The accused contended that the statute could not be violated without the threat being communicated by the accused directly to the person threatened, and that the evidence failed to show a threat to kill, but only a conditional threat. Observing that there was no language in the statute indicating that the threat must be communicated by the accused directly to the person threatened to constitute a violation, the court observed that the threat to shoot another is a threat to cause such serious physical injury to another person as to constitute terroristic threatening within the express scope of the statute, and stated that the fact that the 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.

Under statute governing terroristic threatening, it was element of offense that defendant act with purpose of terrorizing another person; thus, evidence was insufficient to support conviction of jail inmate for telling other inmates "You'll read about some of those [deputies] in the obituary and they won't die of natural causes because I'll be out of this pen some day" where, though defendant knew it was possible he could be overheard, he did not make statement with conscious object of terrorizing complaining deputy, that he might be overheard. *Knight v State (1988) 25 Ark App 353, 758 SW2d 12.*

See *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, § 3.

On the other hand, a terroristic threat conviction was reversed in *Wiggins v State (1984) 171 Ga App 358, 319 SE2d 528,* where a mental patient arrested by a county police captain for making threats against the President's life telephoned a message to the local FBI office's answering device that the harassment would be stopped or she would kill the county police captain. The court said that the fact that the message was not directly communicated to the victim did not itself preclude a conviction, if the threat was submitted in such a way as to support the inference that the speaker intended or expected it to be conveyed to the victim. However, the court said, there was nothing in the context of the message to indicate any intent that the message be conveyed to the police captain, and there was no evidence of a relationship between the FBI office and the sheriff's department suggesting the FBI as a conduit for a message to the police captain other than the expectation that law enforcement agencies may display some spirit of co-operation. The court also noted the conditional nature of the threat and the state's acknowledgment that the accused did apparently in good faith believe that the police captain was persecuting her. Considering these factors and the accused's history of mental illness, the court said that a rational trier of fact could not reasonably determine that there was no reasonable doubt as to the accused's guilt.

See *Stephens v State (1985) 176 Ga App 187, 335 SE2d 473,* § 14[a].

See *Cooley v State (1995) 219 Ga App 176, 464 SE2d 619, 95* Fulton County D R 3710, reconsideration den (Nov 29, 1995), § 23.

Testimony of defendant's ex-girlfriend and her sister, that defendant communicated threat to ex-girlfriend that he would commit battery on victim, was sufficient to authorize conviction of terroristic threat with purpose to terrify ex-girlfriend. O.C.G.A. § 16-11-37(a). *Shepherd v. State, 230 Ga. App. 426, 496 S.E.2d 530 (1998).*

Terroristic threatening occurred, even though threat was not communicated to person against whom it was made, where defendant stated outside restaurant in presence of police officers that he would "get his gun" and "take care of that fat bitch once and for all." Offense did not require that person threatened be terrorized. Terroristic threatening was not lesser-included offense of intimidating witness, since conduct was based on separate events, and intent to terrorize was different from intent to induce person to absent himself from official proceeding. *State v Alston (1994, Hawaii) 865 P2d 157.*

Evidence that investigator in prosecutor's office, who had been informed of threat against two specific prosecutors, met with detective of prosecutor's office and gave him photograph of defendant, spoke with detective assigned to special investigative unit at state police that investigated threats made to judges and prosecutors throughout state, and distributed photographs of defendant throughout prosecutor's office was sufficient to permit jury to infer that both victims were aware of defendant's threats, for purposes of terroristic threat charges. N.J.S.A. 2C:12-3, subd. b. *State v. Ortisi, 308 N.J. Super. 573, 706 A.2d 300 (App. Div. 1998),* certification denied, *156 N.J. 383, 718 A.2d 1212 (1998).*

See *Commonwealth v Campbell (1993, Pa Super) 625 A2d 1215,* § 7.

[*25] Nonverbally communicated threats

[*25a] Symbolic threats

It has been held that a terroristic threat statute may be violated by a nonverbal, symbolic threat which in other respects satisfies the criminal elements specified in the terroristic threat statute.

Statute criminalizing burning or desecrating cross or other religious symbol on private property was within scope of "true threat" doctrine, under which threats of violence may be punished without infringing First Amendment even though statute applied not only where perpetrator of malicious cross burning had purpose of terrorizing victim, but also where perpetrator acted in reckless disregard of risk of terrorizing victim. Statute was also within scope of "fighting words" doctrine, under which statements that by their very utterance inflict injury or tend to incite immediate breach of peace may be punished without infringing First Amendment, even though malicious cross burning typically is not done in victim's immediate physical presence and thus does not tend to incite immediate fight, and even though it is expressive conduct rather than utterance of words. Finally, for statute that regulates speech or expressive conduct to survive constitutional challenge based on vagueness, it must provide sufficient notice to citizenry as to what is prohibited, provide explicit standards to those who must enforce statute, and be sufficiently precise to avoid potentially inhibiting effect on speech. Present statute was not unconstitutionally vague since it required specific mental states; offender had to know that desecrated object was religious symbol and must have acted for purpose of terrorizing or in reckless disregard of that risk, which elements

clarified what was prohibited. *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.*

The burning of a wooden cross on the assistant county attorney's driveway was held properly found to be a terroristic threat in *State v Miller (1981) 6 Kan App 2d 432, 629 P2d 748,* although the court cautioned that the burning of a cross on another's property is not per se a terroristic threat. The assistant county attorney and his wife were not home at the time, and their daughter and a babysitter, who were home, were not aware of the incident until a neighbor called to alert them. The defendant had formerly been the attorney's client, but the attorney was prosecuting him and indicated that he was seeking the maximum jail sentence, which led to arguments between the two men, with the defendant becoming loud and belligerent. The court concluded that the record contained sufficient evidence when viewed in the light most favorable to the prosecution to convince the court that a rational factfinder could have found the defendant guilty beyond a reasonable doubt.

[*25b] Menacing acts

In some cases the accused's menacing conduct without the utterance of verbal threats has been held sufficient to constitute a violation of the state criminal terroristic threat or terroristic threatening statute.

There was held to be sufficient evidence of terroristic threatening to sustain guilty verdicts in *Davis v State (1984) 12 Ark App 79, 670 SW2d 472,* where the defendants tried to run a car, whose occupants were a woman and her three children with the youngest being an 8-year-old boy, off the road during a car chase on a dark, deserted, winding county road. At the end of the 3-mile chase, one of the defendants pulled his van alongside the victims' automobile, and the other defendant leaned out of the van and struck the automobile twice on its roof with a leg from a chair. The automobile driver managed to evade the defendants, made her way home, and called the sheriff's department. The court said that the terror that gripped the innocent family during the ordeal was manifest in their testimony. In affirming the convictions, the court said that the defendants' conduct during the 3-mile chase was certainly prolonged enough.

Evidence supported conviction by jury of defendant charged with making terroristic threat with "butterfly knife," where victim testified that defendant initiated confrontation while victim and his family were crossing vacant lot in which defendant and his friends were loitering, then threatened victim with rocks before displaying knife, opened to its 11-inch length. *State v Corpuz (1994, Hawaii App) 880 P2d 213,* cert den *77 Hawaii 373, 884 P2d 1149.*

Defendant who engaged in months-long campaign involving leaving dead animal parts, spray-painting epithets, planting fake bombs, cutting telephone wires, puncturing automobile tires, and throwing objects at victims' homes was properly convicted under terroristic threat statute, even though his threats were communicated nonverbally; defendant communicated threat to injure, kill, or in some way harm victims, satisfying statutory requirement that threat be of violent crime. *State v. Murphy, 545 N.W.2d 909 (Minn. 1996),* related reference, *1997 WL 698423 (Minn. Ct. App. 1997).*

However, a sentence for terroristic threats was reversed for insufficient evidence in *Commonwealth v Musselman (1979) 483 Pa 245, 396 A2d 625,* where the accused engaged in a bar fist fight with one Zeth, and upon being ordered to leave the bar, was heard to say to Zeth, "Your're dead." Minutes later the accused reappeared in the bar doorway with a .22 caliber rifle. Hammel, a friend of the accused not involved in the earlier fight, approached him. The accused fired, fataling wounding Hammel in the abdomen, and soon fled. In reversing a conviction for terroristic threats as to Hammel, the court said that there was evidence of a threat against Zeth but no evidence connecting this threat or any other threat to Hammel, so that the conviction of issuing terroristic threats against Hammel could not stand. The conviction for uttering terroristic threats against Zeth was not challenged.

In *Commonwealth v White (1975) 232 Pa Super 176, 335 A2d 436,* the court upheld the accused's conviction for the crime of terroristic threat under evidence that the accused approached an 8-year-old girl while she was playing, placed his hand over her mouth and shined a flashlight on her face, carried her to the back of an abandoned house, told the girl he was going to grab her, held her against a wall by her shoulders and proceeded to pull her skirt up approximately 6 inches, and fled only when a neighbor passed by a window in the abandoned house and the child called out that the accused wanted to kill her. Noting that the statute in question made it a misdemeanor for a person to threaten 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 Commonwealth must prove that a threat to commit a crime of violence was made, and that such threat was communicated with an intent to terrorize. Holding that the totality of the accused's conduct constituted a threat to commit the crime of rape, the court stated that the fact that the accused was acquitted on the charges of attempted rape and statutory rape was of no consequence, because the proscribed conduct is the threat itself and not the actual commission of the threatened crime. Rejecting the accused's contention that there was insufficient evidence to establish the requisite intent to terrorize, the court stated that the application of a general statute on culpability to the material element of intent to terrorize required the Commonwealth to establish that it was the conscious object of the accused to engage in conduct of that nature. Observing that this necessary criminal intent may be inferred from facts and circumstances which are of such a nature as to prove a defendant's guilt beyond a reasonable doubt, the court stated that the trial court properly determined that the accused's intent to terrorize was proved beyond a reasonable doubt in view of his actions toward the complainant.

[*25.] 5 Corroboration

The court in the following case held that the corroboration requirement of a terroristic threats statute was satisfied.

Corroboration requirement of terroristic threats statute was satisfied by victim's testimony that defendant said he would kill her if she did not let him into locked school building, which was corroborated by laceration that victim received when defendant stabbed her as she tried to run away and by testimony of witness who observed victim immediately following incident, which testimony indicated that victim was at point of hysteria. *Scott v. State, 225 Ga. App.*

729, 484 S.E.2d 780 (1997).

VI. Victim's state of mind

[*26] Fear of imminent harm as not required

In some cases the courts have expressly stated that it is not an essential element of the offense of making a terroristic threat that the victim actually be placed in fear of imminent harm.

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

Thus, the court in *Thomas v Commonwealth (1978, Ky App) 574 SW2d 903,* upholding the constitutionality of a state criminal terroristic threatening statute, pointed out that the statute did not require that the victim be placed in reasonable apprehension of immediate injury.

Statements by the accused to friends of the victim wherein he threatened to kill the victim and the victim's mother were held to be sufficient to sustain the accused's conviction for making a terroristic threat in *State v Schweppe (1975) 306 Minn 395, 237 NW2d 609.* The statute in question provided that whoever threatens to commit any crime of violence with the purpose 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 a reckless disregard of the risk of causing such terror or inconvenience could be sentenced to imprisonment for not more than 5 years. Noting 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, the court stated that the accused's alleged statements clearly constituted a threat to inflict personal injury, noting that if the jury believed the unrefuted testimony of the prosecution witnesses, then there was ample evidence to support the conclusion that the accused threatened to kill the victim and his mother, which threats involved a crime of violence prohibited by the homicide statutes. Noting that the statute requires that the accused uttered the threat with the purpose of terrorizing another, and that "terrorize" means to cause extreme fear by use of violence or threats, the court concluded that the evidence supported the jury's conclusion that the accused uttered threats with the purpose to terrorize the victim and his mother, noting evidence that the accused stated that he wanted to make the accused "paranoid" and that he told the victim's friend to mention his name to the victim and to report to the accused whether the victim reacted in a fearful manner. Noting the accused's argument that evidence of purpose requires either a direct threat to the victim or a threat made in such a way as to support the inference that the speaker intended it to be conveyed to the victim, and observing that the accused was logically correct in that a speaker cannot intentionally commit the crime of terrorizing another if he utters the threat in circumstances where he does not know, or have reason to know, that it will be communicated to the victim, the court stated that this argument was of no help to the accused in the present case, since the testimony established that the accused uttered his threats in the presence of friends of the accused, which implied and clearly would support a finding that the accused knew, or had reason to know, and thus intended that his threats to kill the victim would be communicated to him. Noting that the effect of a terroristic threat on the victim is not an essential element of the statutory offense, and noting that the

trial court permitted questions and testimony as to the effect of the alleged threat but instructed the jury to consider such testimony only to the extent that it had a bearing on the intent of the accused in making the threat, the court rejected the accused's contention that the testimony and instruction were prejudicial and tended to confuse the jury, observing that the victim's reaction to the threat was circumstantial evidence relevant to the element of intent of the accused in making the threat.

A terroristic threat conviction was reversed because of the prosecutor's misstatements concerning the offense in *Dues v State (1982, Tex Crim) 634 SW2d 304*, where the prosecutor told the jury that in determining what the accused's intent was, the victim's thought was determinative. The statute defined the offense as threatening to commit any offense involving violence to any person or property with intent to place any person in fear of imminent serious bodily injury. The court said that in order to commit the offense, the accused must have the specific intent to place any person in fear of imminent serious bodily injury; that a person acts with intent with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result; that intent can be inferred from the accused's acts, words, and conduct; but that the accused's intent cannot be determined merely from what the victim thought at the time of the offense. Indeed, the court said, the offense may be completed without the victim or anyone else being actually placed in fear of imminent serious bodily injury, and it is immaterial that the accused lacked the capability or the intention to carry out the threat. All that is necessary, the court said, is that the accused by his threat sought as a desired reaction to place a person in fear of imminent serious bodily injury.

See *Bryant v State (1995, Tex App Waco) 905 SW2d 457*, § 29.

See George v State (1992, Tex App Houston (1st Dist)) *841 SW2d 544*, petition for discretionary review gr (Apr 14, 1993), § 14[a].

[*27] Terror as not required

In some cases, the courts have ruled that the offense of making terroristic threats may be committed without the victim having been placed in a state of terror.

Since terroristic threatening was not defined as continuing offense, statute permitting conviction of only one offense if conduct constituted continuing course of conduct was not applicable to defendant's threats to kill seven employees in his former employer's office; further, since statute governing terroristic threatening merely prohibited communication of threat with purpose of terrorizing another, it was not necessary that threat's recipient actually have been terrorized. *Smith v State (1988) 296 Ark 451, 757 SW2d 554.*

The degree of fear instilled in the victim was held not relevant in *Boone v State (1980) 155 Ga App 937, 274 SE2d 49*, in which two brothers held a rifle and shotgun on two undercover narcotics agents, one saying that if they were the law, he was going to blow them away; that if they moved, he would bash their heads in; that if they moved, he was going to blow them away; that he was going to blow them away; and that they had better not turn around or try to come back, because he would blow them away. The court said that the accuseds' statements and actions constituted terroristic threats and not merely conditional threats

made merely to preserve the status quo while they determined the strangers' identity. It declared that direct evidence that the threats were made for the purpose of terrorizing another is not necessary if the circumstances surrounding the threats are sufficient for a jury to find that the threats were made for such a purpose. It ruled that the evidence was ample to support a jury finding that the threats were made with the requisite criminal intent. Finally, it said, the question of the degree of fear into which the officers were placed was unimportant "because 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 Alston (1994, Hawaii) 865 P2d 157*, § 24.

See *State v Saltzman (1990) 235 Neb 964, 458 NW2d 239*, § 29.

The contention that the targets of the threats were not put in terror was rejected in *Commonwealth v Bunting (1981) 284 Pa Super 444, 426 A2d 130*, where the accused was alleged to have threatened to bomb the house of the chairman of the township board of supervisors; said that it would be unhealthy for a neighbor to be caught in the field, because the accused would get the neighbor and his son; that he was going to get a gun and go after a zoning officer; and that he would arrange a legal accident to wipe out a neighbor's mother. The accused argued that the victims experienced no fear and terror but expressed only concern for their safety and that of others, and that the victims lacked knowledge of the accused's ability to carry out the threats, and therefore could not have been placed in terror. The court ruled that the evidence of terror was sufficient where the victims testified to a fear of consequences, although none testified that he was in terror.

[*28] Prolonged state of fear as not required

A violation of a terroristic threatening statute has been held not to require that the victim be placed in a prolonged state of fear.

In *Warren v State (1981) 272 Ark 231, 613 SW2d 97*, upholding the constitutionality of the felony terroristic threatening statute, the court rejected the accused's argument that the terroristic threatening offense, 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.

See *People v Allen (1995, 2nd Dist) 33 Cal App 4th 1149, 40 Cal Rptr 2d 7*, 95 CDOS 2458, 95 Daily Journal DAR 4215, review den (Jun 14, 1995), § 14[a].

VII. Requisite intent

[*29] Intent to cause fear

In several cases it has been held or stated that it is an essential element of the offense of making a terroristic threat or terroristic threatening that the accused have made the threat with the intent or purpose of causing fear in the victim or in reckless disregard of the risk of causing such fear. *Ark-Davis v State (1984) 12 Ark App 79, 670 SW2d 472. Hawaii-In Interest of Doe (1982) 3 Hawaii App 325, 650 P2d 603.* Pa-But see *Commonwealth v Frank (1979) 263 Pa Super 452, 398 A2d 663; Commonwealth v Sullivan (1979) 269 Pa Super 279, 409 A2d 888;*

Commonwealth v Kidd (1982) 296 Pa Super 393, 442 A2d 826; Commonwealth v Hardwick (1982) 299 Pa Super 362, 445 A2d 796; Commonwealth v Speller (1983) 311 Pa Super 569, 458 A2d 198; In re B.R., 1999 PA Super 6, 732 A.2d 633, 136 Ed. Law Rep. 504 (Pa. Super. Ct. 1999). *Tex-Dues v State (1982, Tex Crim) 634 SW2d 304.*

See *Konrad v State (1988, Alaska App) 763 P2d 1369* (citing annotation), § 4.

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].

See *Carver v State (1988) 258 Ga 385, 369 SE2d 471, 15 Media L R 1682,* § 15.

See *State v Alston (1994, Hawaii) 865 P2d 157,* § 24.

The Hawaii terroristic threatening statute's requirement of an intent to cause or reckless disregard of the risk of causing a victim's serious alarm for his personal safety was held met in In *Interest of Doe (1982) 3 Hawaii App 325, 650 P2d 603,* where an 11th-grade boy followed two younger children, saying loudly that he would like to speak to one of them, an 8th-grader carrying a basketball. The 11th-grader stopped them, said that he would like to show them something in the bushes, asked the victim if he would like a slap in the head, and asked him if he wanted a punch right then in front of everybody. The 11th-grader attempted to take the basketball from the victim before the victim and his companion got on a bus. In affirming a finding of terroristic threatening, the court said that intent may be proven and often is proven by circumstantial evidence and reasonable inferences to be drawn therefrom, and that substantial evidence supported the trial court's decision.

Evidence was sufficient to support defendant's conviction of making terroristic threats against police officer and his family where several witnesses testified that defendants had made threats and jury could reasonably have inferred intent to terrorize necessary to support guilty verdict under governing statute. *State v Skramstad (1988, Minn App) 433 NW2d 449,* later proceeding (Minn App) *1989 Minn App LEXIS 447.*

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

Evidence supported finding that defendant was guilty of committing terroristic threats where, in retaliation for involvement of others in his prior conviction for sexual assault of young girl, defendant telephoned girl's protective services worker and said "you're gonna die, you bitch," telephoned chief of police numerous times and stated, among other things, "you're going to die. I'm going to blow your house up," and telephoned a witness's home and told witness's husband that he was going to get witness and their children; statute did not require proof that defendant intended to execute threats or that recipient actually felt terrorized, but only that defendant intended to terrorize recipient, and defendant's statements were sufficient to support such a finding; fact that defendant may have been intoxicated when he made threats was not a defense, since evidence failed to show that he was so intoxicated that he could not form requisite intent to terrorize his victims. *State v Saltzman (1990) 235 Neb 964, 458 NW2d 239.*

But see *Commonwealth v Frank (1979) 263 Pa Super 452, 398 A2d 663,* disapproving a jury instruction in a terroristic threat case that the accused was not guilty if he was so drunk that he could not form an intention to do anything. The appellate court said that the charge was too broad because the offense did not require specific intent, so that the accused's intoxication would not have excused him from criminal liability.

The requisite intent to terrorize was held absent in *Commonwealth v Sullivan (1979) 269 Pa Super 279, 409 A2d 888,* involving a telephoned threat to state police. Three incidents were involved: (1) the accused's telephoning the state police barracks with a report that the accused's father had been assaulted by a county sheriff, and demanding that a trooper be sent at once to his home; (2) a second telephone call to the barracks, made before the trooper arrived, saying that "If you don't want to send anybody down here, I have a .30-.30 rifle and I'll come up there and blow that son of a bitch's head off"; and (3) a street meeting between the accused and the sheriff on the following morning, in which a shouting match ensued and the accused again threatened to kill the sheriff. A trooper testified that during the first telephone call, the accused was "very angry and not rational," and on cross-examination he agreed that the accused was "upset" and on the second call was "angrier" because the trooper had not arrived. In vacating the accused's conviction, the court said that the accused did indeed threaten to commit a crime of violence, but that the evidence did not show that the accused possessed the requisite intent to terrorize the sheriff. The court noted that there was no evidence that the accused had any intention of carrying out the death threat; that the accused was in an agitated and angry state of mind; and that to constitute an offense, a threat must be seriously made and not merely idle with no intention of carrying out the threat or of terrorizing the victim.

See *Commonwealth v Campbell (1993, Pa Super) 625 A2d 1215,* § 7.

See *Commonwealth v Cancilla (1994, Pa Super) 649 A2d 991,* § 22.

Requisite intent could be inferred from evidence that complainant was in fear of imminent serious bodily injury, and that he felt that it was defendant's intention to so place him, and that complainant's wife felt husband was very scared and was physically shaken as result of defendant's words, gestures, and conduct. *Hadnot v State (1994, Tex App Beaumont) 884 SW2d 922.*

Defendant was improperly convicted of making terroristic threat when he stated that if commissioner didn't grade road in front of his house he was going to kick commissioner's "god damn ass" where, although statute did not require actual fear of imminent injury on part of victim, it required intent to place person in fear of imminent serious bodily injury, and evidence did not show that defendant intended to place commissioner in fear of serious bodily injury in close proximity of time to their confrontation. *Bryant v State (1995, Tex App Waco) 905 SW2d 457.*

State presented factually sufficient evidence of defendant's intent to place victim in fear of imminent serious bodily injury to support his terroristic threat conviction, where victim testified that he saw defendant jump through living room window and yell and scream, that defendant appeared angry, that defendant steadily moved toward victim threatening to kill him, and that because of defendant's actions, he was afraid for his life. V.T.C.A., Penal Code §

22.07. *Poteet v. State, 957 S.W.2d 165 (Tex. App. Fort Worth 1997).*

See George v State (1992, Tex App Houston (1st Dist)) *841 SW2d 544*, petition for discretionary review gr (Apr 14, 1993), § 14[a].

[*30] Intent to carry out threat

In several cases it has been held or recognized that the offense of making a terroristic threat or terroristic threatening may be complete without the accused having intended to carry out the threat. *Del-Allen v State (1982, Del Sup) 453 A2d 1166. Pa-Commonwealth v Hardwick (1982) 299 Pa Super 362, 445 A2d 796; Commonwealth v Speller (1983) 311 Pa Super 569, 458 A2d 198. Tex-Dues v State (1982, Tex Crim) 634 SW2d 304.*

For purpose of terrorist threat conviction, determination whether defendant intended his words to be taken as threat, and whether words were sufficiently unequivocal, unconditional, immediate and specific that they conveyed to victim an immediacy of purpose and immediate prospect of execution of threat, can be based on all the surrounding circumstances and not just on words alone, and parties' history can also be considered as one of the relevant circumstances. West's Ann. Cal. Penal Code § 422. *People v. Mendoza, 59 Cal. App. 4th 1333, 69 Cal. Rptr. 2d 728 (2d Dist. 1997)*, review filed, (Jan. 8, 1998).

A county jail inmate was held properly found guilty of making a terroristic threat against a corrections officer in *Commonwealth v Hardwick (1982) 299 Pa Super 362, 445 A2d 796*, where two officers transported the inmate to the special housing unit after an altercation. Eleven days later, when one of the officers was delivering food to the special housing unit area, the inmate approached the officer, said that he was going to get out of jail some day, and declared that when he did he was going to get a gun and come after the two officers. In affirming the sentence, the court said that the statute requires an intent to terrorize but does not require that the accused intend to carry out the threat. It declared that a jury could infer that the inmate's intent was to terrorize and, indeed, it was difficult to discern any other reason for making the threat.

While vacating a sentence for terroristic threats, the court in *Commonwealth v Speller (1983) 311 Pa Super 569, 458 A2d 198*, said that the evidence sustained the conviction where the accused, outside the apartment of a couple adjoining their store, called their names and shouted, "We're going to get you out of here tonight," yelled that he would burn their house and make a parking lot of their garage, declared in a loud voice that it would be "the last night on earth" for them, and that he would blow up their house and "finish the job he started two years ago," when he inflicted a serious head injury on the husband with a blackjack. The court said that a violation of the statute is proved by evidence that (1) a threat to commit a crime of violence was made, and (2) such threat was communicated with intent to terrorize. It said that the statute does not require that the accused intend to carry out the threat, although it requires an intent to terrorize, the harm to be prevented being the psychological distress following from an invasion of another's sense of personal security. In this case, the court said, the threats of physical violence to the couple and to destroy their property by fire were threats to commit crimes of violence, and a settled purpose to terrorize, as distinct from a spur of the moment threat resulting from transitory anger, was shown by the history of incidents initiated

by the accused and calculated to harass and annoy the couple. It added that it was unnecessary for the Commonwealth to prove that the accused intended to carry out the threats or that he had the ability to do so.

Statute making it a crime to threaten to assault, kidnap, or murder 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 include requirement that defendant actually intend to carry out threat. U.C.A.1953, 76-8-316(1). *State v. Fixel, 945 P.2d 149 (Utah Ct. App. 1997).*

[*31] Transitory anger

In some cases it has been held or stated that the offense of making a terroristic threat is not established where the accused lacked a settled purpose to terrorize and instead made a spur of the moment threat resulting from transitory anger. *Commonwealth v Ferrer (1980) 283 Pa Super 21, 423 A2d 423; Commonwealth v Kidd (1982) 296 Pa Super 393, 442 A2d 826.*

See *Konrad v State (1988, Alaska App) 763 P2d 1369* (citing annotation), § 4.

Evidence supported conclusion that prison inmate had not been expressing "transitory anger" when he threatened to harm correctional counselor and another member of prison staff after he was released, but rather had possessed requisite intent to terrorize to justify conviction for terroristic threats where recipients of threats testified, respectively, that defendant's tone of voice was very threatening and that he felt seriously threatened and that she felt frightened and intimidated and feared for her life. *State v Jones (1990, Minn App) 451 NW2d 55.*

State failed to show that defendant acted with purpose to cause another to perform or omit performance of any act as required to show intimidation offense arising out of his threats to police officer that as soon as he got out of jail he would "kick [his] ass" and terrorize his family, despite claim that defendant made threats during arrest in attempt to get officer to release him; defendant's threats were merely continuation of his belligerent attitude due to his drunken state and had no specific purpose. MCA 45-5-203. *State v. Hawk, 285 Mont. 183, 948 P.2d 209 (1997).*

A terroristic threats sentence was vacated for lack of the required intent in *Commonwealth v Kidd (1982) 296 Pa Super 393, 442 A2d 826,* where the accused was arrested for public drunkenness outside a tavern and fell in the street receiving a cut over his eye. The arresting officers took him to the local hospital for treatment, handcuffing his hands behind his back. While in the hospital, he repeatedly shouted obscenities and generally screamed and shouted at the officers, and when in the emergency room, he told the police that he was going to kill them, machine gun them, if given a chance. The court said that the accused's present ability to inflict harm was not an element of the offense. However, it said that there was insufficient evidence that the accused intended to place the officers in a state of fear agitating body and mind. Rather, the court said, he was inebriated and angry, and his conduct expressed transitory anger rather than a settled purpose to carry out the threat or to terrorize the officers.

VIII. Defenses

[*32] Intoxication

The cases are in disagreement over the availability of voluntary intoxication as a defense in a terroristic threat or terroristic threatening prosecution, with intoxication being a defense where a specific criminal intent is an essential element of the offense, but not a defense where the offense is established without specific criminal intent.

Under a terroristic threatening statute defining the offense as threatening to cause death or serious physical injury or substantial property damage to another person, with the purpose of terrorizing another person, the defense of voluntary intoxication was held available, "because terroristic threatening requires a purposeful mental state," in *Davis v State (1984) 12 Ark App 79, 670 SW2d 472*. However, the court explained that the defense was available only if there was evidence from which a jury might find that the defendant was intoxicated to such a degree as to be unable to form the requisite intent to commit the crime. To get a jury instruction, the court said, the defendant was required to show not merely that he drank alcohol but also that he was incapacitated from drinking alcohol. In this case, the court ruled, the defendant's own testimony proved that he was not incapacitated at the time the crime was committed, because he gave a detailed account of the events before, during, and after the terroristic threat, and because he had sufficient physical coordination to lean halfway out of a van moving at 45 miles per hour and twice club the victims' automobile with a chair leg. Hence, it said, the trial court did not err in refusing to give the jury an instruction on voluntary intoxication.

See *State v Saltzman (1990) 235 Neb 964, 458 NW2d 239*, § 29.

The trial court's intoxication instruction was criticized in *Commonwealth v Frank (1979) 263 Pa Super 452, 398 A2d 663*, but the accused was held not to have preserved the error. In a prosecution resulting in convictions of first-degree robbery, aggravated assault, and terroristic threats, the trial court charged the jury that the accused was not guilty if he was so drunk that he could not form an intention to do anything. This charge was too broad and too narrow, the court said, being too broad as to assault and terroristic threats because "these crimes do not require specific intent, and appellant's intoxication would not have excused him from criminal liability."

[*33] Justification

[*33a] Threat to collect debt

In a prosecution for making a terroristic threat or terroristic threatening, it has been held no defense that the accused uttered the threat as a means of collecting money which the accused in good faith believed was owed to him.

A legitimate claim of right was held not a defense to a charge of terroristic threatening in *Bilinski v State (1983, Del Sup) 462 A2d 409, 45 ALR4th 941*, affirming the conviction of a defendant for terroristic threatening by attempting to induce bank employees to deliver $ 163,000 to him, threatening to bomb the bank and kill people therein if the money was not delivered, wherein the trial court found that the defendant believed that the bank had not

delivered to him all of the contents of a safe-deposit box which the bank opened after the defendant failed to make rental payments thereon. The court said that the claim-of-right defense was limited to extortion and theft-related crimes, because the harm sought to be prevented by the extortion statute is the wrongful acquisition of property by threat. By contrast, the court said, the harm sought to be prevented by the terroristic threatening statute was the threat-induced fear itself. "Consequently," the court concluded, "the nature of the claim underlying the threatening behavior is immaterial. Our law does not permit the owner of property to terrorize another in order to retrieve his property."

A juvenile offender adjudication was affirmed in *Findlay v State (1984) 235 Kan 462, 681 P2d 20,* wherein the court found that there was sufficient evidence to support the trial court's finding that the juvenile had uttered a terroristic threat. The juvenile believed that the victim owed him money, and telephoned him with a demand for payment of the debt. When the victim refused to pay, the juvenile threatened to shoot the victim and to kill him.

[*33b] Threat to protect personal safety

In some cases it has been held a defense to a terroristic threat or terroristic threatening charge that the accused made the threat as a protection against the victim's perceived threat to the accused's personal safety.

See *Wiggins v State (1984) 171 Ga App 358, 319 SE2d 528,* holding that a mental patient did not violate the terroristic threat statute by threatening to kill the county police captain unless he stopped harassing her. In holding that there was a reasonable doubt as to the accused's guilt, the court noted the conditional nature of the threat and the state's acknowledgment that the accused did apparently in good faith believe that the police captain was persecuting her.

Justification was held to be a defense to a terroristic threatening charge in *State v Realina (1980) 1 Hawaii App 167, 616 P2d 229,* in which the accused, a 44-year-old man, was originally threatened by the victim, a 24-year-old man who weighed 200 pounds. The younger man warned the older man to stay away from the younger man's wife and threatened to kill the older man, who reported the threats to the police. When the younger man began following the older man in traffic, the older man drove to a police station. The younger man approached the older man's car, wherein the older man sat silently, and threatened to kill the older man. The older man then started his engine, and the younger man reached in the car and grabbed the older man by the shirt to prevent him from leaving. The older man turned off his engine and the younger man let go of the shirt. The older man then found a cane knife in the car and came out of the car with the knife in his hand. The younger man turned and ran toward the police station, about 100 yards away. The older man ran after him, about 30 yards behind, but the younger man entered the police station and reported excitedly that he was being chased by a man trying to kill him. An officer listened to the story and went outside, where the older man was still running, at least 30 feet from the station. The officer ordered the older man to drop the knife, and the older man immediately complied. In reversing the older man's conviction of terroristic threatening, the court said that the statutory authorization to use force is available in a justification defense to a charge of terroristic threatening; that whether deadly force may be used depends upon whether the defendant reasonably believed that such force was necessary to protect him from the

statutorily enumerated dangers; that whether nondeadly force may be used depends on whether the defendant reasonably believed it necessary to prevent unlawful force from being used against him; that the younger man's conduct initially justified the older man's resort to deadly force; and that the older man's justification defense did not, as argued by the prosecution, evaporate in the long chase to the police station, in view of the fact that the older man drove to the police station and that the chase was into the police station.

[*34] Merger with other offense

[*34a] Assault

In some cases the offense of making a terroristic threat has been held not to merge with the offense of assault, especially where the assault was completed before the threat was uttered or the accused was not charged with assault.

But in *Zilinmon v State (1975) 234 Ga 535, 216 SE2d 830,* it was held that evidence to the effect that the accused came to the victim's door pretending to be her "paperman," forced his way into her residence, made threats on her life and inflicted physical abuse on her, dragged her upstairs, raped her, burglarized her home, dragged her back downstairs where he again threatened her life, and stomped her about the back and stomach and, after saying that "The next time I come down you won't be alive to tell it," he stomped her again, rendering her unconscious, was sufficient to authorize the accused's rape, burglary, robbery, and aggravated assault with intent to murder, but was insufficient to convict him of the charge of terroristic threats. Stating that the statute making illegal threats for the purpose of terrorizing another does not include situations where overt acts are done to carry out the threat, the court observed that once an overt act is done, a violation of some other statute occurs. Stating that a threat to kill in the present case, if accomplished, would be murder, and if not accomplished would constitute aggravated assault, the court stated that having been convicted of aggravated assault with intent to murder, the count of the indictment charging the accused with terroristic threats merged into this conviction, pointing out that an accused may be prosecuted for each crime arising from the same conduct, but may not be convicted of more than one crime if one is included in the other. Thus, the court directed the trial court to vacate the conviction and sentence for terroristic threats, and otherwise affirmed the judgment of conviction.

In *Echols v State (1975) 134 Ga App 216, 213 SE2d 907,* the court upheld the conviction of the accused for terroristic threats and for assault with intent to murder based upon evidence that the victim shared a prison cell with the accused, a cohort of the accused, and several others, that the accused and his cohort twice, within a matter of minutes, inflicted serious beatings upon him, and that during a 4-minute hiatus between the first and second beating, the accused stated "Let's go ahead and kill him; that way he won't be able to talk . . . Just let me do it; just let me do it; I won't get anymore out of it." This testimony was corroborated by that of another cellmate, who testified that the accused stated: "We want to go ahead and kill him; it wouldn't make any difference to me, you know, I've got life and 20 years, you know; let's get rid of him; he's going to tell on us anyway." Noting the statutory definition 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, the court rejected the accused's contention

that his conviction for terroristic threats was unjustified because the statute was meant to describe conduct which would be of a much more serious nature than a mere threat to an individual person. The court further rejected the contention that the accused's conviction for aggravated assault and conviction for terroristic threats amounted to multiple convictions for the same conduct, the court, noting that an accused prosecuted for more than one crime may not be convicted of more than one crime if one crime is included in the other, or the crimes differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct, stated that the crime of terroristic threats is not included within the crime of aggravated assault with intent to murder. Noting that each crime involves proof of separate and distinct essential elements, and that one may commit aggravated assault with intent to murder without uttering threats designed to terrorize his victim, the court, affirming the judgment of conviction, stated that the crimes are mutually independent and each is aimed at prohibiting specific conduct.

The testimony of the victim that during a conversation with the accused, the victim placed his hand on the accused's shoulder, and the accused then struck the victim on the side of the face with his fist and then produced a gun and pointed it at the victim, and then said either "if you don't get out of here, I'll blow your head off," or "I'll blow your brains out. I'll kill you, if you don't get out of here as fast as you can," or "I'll shoot you," or words of similar effect was held to constitute evidence of guilt in the accused's prosecution for making terroristic threats in *Hornsby v State (1976) 139 Ga App 254, 228 SE2d 152*. The accused testified that the victim approached him and stuck his hand on the accused's shoulder four times and used opprobrious words, and that the fourth time the victim put his hand on the accused it was on the accused's nose, and that the accused hit the victim one time, the accused denying that he made any threats or that he brandished or even owned a gun. Noting that the crime of terroristic threats requires corroboration of the testimony of the victim, the court rejected the accused's contention that the victim's testimony was not corroborated because it was incapable of corroboration as he had given so many different versions of what transpired, the court pointing out that two prosecution witnesses confirmed the fact that the accused possessed a pistol when he confronted the victim, and that one state witness corroborated the victim's version by testifying that the accused said "I'll shoot you and kill you." The court noted that it could visualize that a person of ordinary comprehension might encounter difficulty remembering the exact words uttered by an angry assailant who was brandishing a gun, and observed that the substance of the victim's testimony was that the accused told him that he could be shot and killed if he did not remove himself from the vicinity. Rejecting the contention that the crime of terroristic threats merged into the overt act of assault committed by the accused, the court distinguished a prior case in which it was held that the terrorizing threat statute did not include situations where overt acts were done to carry out the threat, n21 the court noting that in that case the threat occurred and then merged into the following assault with intent to murder, and stated that in the present case the assault occurred first and was terminated before the terroristic threat occurred, concluding that the completed assault did not merge into the following threat and that each offense involved proof of different essential elements and were clearly separate offenses. Stating, however, that the evidence of guilt did not demand a verdict of guilty, the court reversed the judgment of conviction based upon prejudicial error which occurred when the prosecutor was allowed on cross-examination to bolster the credibility of a witness whose testimony had

not been impeached and whose character had not been assailed.

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

n21 *Zilinmon v State (1975) 234 Ga 535, 216 SE2d 830,* infra.

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

An estranged husband who broke into his wife's rented house while she, her son, and her male friend were watching television while sitting on the couch, and who threatened to kill the male friend, was held properly convicted of burglary and terroristic threats in *Aufderheide v State (1978) 144 Ga App 877, 242 SE2d 758,* despite the husband's argument that his conduct toward the male friend constituted an overt act toward carrying out his threat and thereby was an assault so as to preclude a conviction of terroristic threat. The court rejected the argument on the ground that the defendant was not charged with assault and that the terroristic threat did not merge into the burglary offense.

[*34b] Battery

In one case in which an accused committed the offense of aggravated battery before uttering a terroristic threat, the terroristic threat offense was held not to merge into the battery offense.

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, after victimizing her with aggravated kidnapping and aggravated battery, he retrieved a mirror from his pickup truck, forced her to look into the mirror, and threatened to send two men to her house to harm her if she called the police. The court said that this offense was separate from the earlier offenses.

[*34c] Burglary

A terroristic threat offense has been held not to merge into a burglary offense where the burglary preceded the threat in that the accused broke into the building and then uttered the threat.

An estranged husband who broke into his wife's rented house while she, her son, and her male friend were sitting on the couch watching television, and who threatened to kill the male friend, was held properly convicted of burglary and terroristic threats in *Aufderheide v State (1978) 144 Ga App 877, 242 SE2d 758,* in which the court stated that the terroristic threat did not merge into the burglary offense.

[*34d] Endangerment

It has been held that an accused cannot be convicted of both terroristic threatening and wanton endangerment where the convictions of the two offenses rest on the same facts.

In *Watson v Commonwealth (1979, Ky) 579 SW2d 103,* the accused's conviction of five counts of terroristic threatening was reversed on the basis that he was also convicted of four counts of wanton endangerment based upon the same facts. The evidence disclosed that the accused and his brother were arrested for public

drunkenness after the accused drove his automobile into a ditch, that they were placed into the back of the police cruiser, and when the officers returned to their cruiser the accused pointed a shotgun at them and ordered them to let the accused and his brother out of the cruiser. The accused thereafter threatened to kill the police officers if they did not follow his instructions, and that as the police officers and other hostages safely made their escape when the accused's attention was diverted, the accused fired four shots at them. Noting that when a single course of conduct of an accused may establish the commission of more than one offense, he may be prosecuted for each such offense, but may not be convicted of more than one offense when one offense is included in the other, and that an included offense is one which differs from the offense charged only in the respect that a less serious injury or risk of injury suffices to establish its commission, the court noted that in order to convict on the terroristic threatening counts the jury had to believe that the accused threatened to shoot the victims, and that in order to convict on the wanton endangerment counts, the jury had to believe that the accused fired a shotgun at the victims. Observing that the only difference between the threat and the act in the present case was the increased risk of injury to the victims, the court stated that as a result the accused should not have been convicted of the terroristic threatening of the victims after he had been convicted of wantonly endangering them. Stating that it was unable to protect the accused's rights by merely vacating four of the terroristic threatening convictions, since at trial the accused requested and was refused an instruction on the presumption of innocence, the court held that since it had determined as a matter of state law not to engage in the application of the harmless error doctrine, the accused was entitled to a new trial on all charges of which he was convicted.

[*34e] Influencing judicial officer

In the following case, the offense of making a terroristic threat has been held not to merge into the offense of attempting to influence a judicial officer.

Evidence that the accused telephoned a judge who had presided over a previous prosecution of the accused for the battery of a child and ordered the judge to destroy certain records concerning his conviction arising out of that prior prosecution and stated "I am going to have to massacre a lot of innocent people. I am going to have to kill a lot of people if you don't destroy these records," was held to be sufficient to sustain the accused's prosecution for making a terroristic threat in *State v Torline (1974) 215 Kan 539, 527 P2d 994*. The judge testified that he was terrified over the telephone call, that he was married and had small children, and that he was not only frightened for himself, his wife, and his children, but also for all of the other people who had been involved in the previous prosecution. The court rejected the contention that the terroristic threat count and a separate count for attempting to influence a judicial officer were duplicitous, observing that one may attempt to influence a judicial officer without the use of a threat, and that one may make a terroristic threat without attempting to influence a judicial officer, observing that each count comprised an offense requiring proof of an element not requisite in the other. Noting that upon a review of the sufficiency of evidence, the Supreme Court will examine the record to determine whether from all the facts and circumstances the jury could reasonably have drawn an inference of guilt, the court, affirming the judgment of conviction as to the terroristic threat count, stated that it appeared from the record that there was a sound basis in

the evidence for a reasonable influence that the accused telephoned the judge with the purpose and intent of making a terroristic threat.

[*34f] Kidnapping

In cases in which an accused kidnapped his victim and then made terroristic threats to her, the terroristic threat charge was held not to merge into the kidnapping charge. *Allen v State (1982, Del Sup) 453 A2d 1166; State v Dubish (1984) 234 Kan 708, 675 P2d 877.*

An estranged husband who kidnapped his wife and then threatened to send two men to her house to harm her if she called the police was held properly convicted of both making a terroristic threat and aggravated kidnapping in *State v Dubish (1984) 234 Kan 708, 675 P2d 877,* in which the court said that the terroristic threat offense was separate from the earlier offense.

[*34g] Robbery

A terroristic threat offense has been held to merge with robbery where the threat is made in the course of the robbery so as to accomplish the theft.

A terroristic threat charge was held to merge with robbery in *Commonwealth v Walls (1982) 303 Pa Super 284, 449 A2d 690,* where the accused, in the course of a bank robbery, told the head teller that if she did not get away from the phone-which she had in her hand-he would blow her head off. Because he was pointing a sawed-off shotgun at her face, she did as she was told. In vacating the terroristic threat sentence, the court said that two offenses merge if one crime necessarily involves another; that robbery is acting, in the course of committing a theft, to threaten another with or intentionally put him in fear of immediate bodily injury; that a terroristic threat is threatening to commit any crime of violence with intent to terrorize another; and that in the instant case the facts supporting the terroristic threat charge were "part and parcel of, the robbery charge as to this victim, i.e., threatening her with a gun in the course of committing a theft."

[*34h] Sex offense

The cases are in disagreement as to whether a threat uttered to overcome the victim's resistance during the commission of a sex offense constitutes a separate offense.

Convictions of rape, kidnapping, and terroristic threatening were affirmed in *Allen v State (1982, Del Sup) 453 A2d 1166,* where the defendant grabbed a young woman as she was unlocking her car door, dragged her into bushes, and, despite her resistance, threw her to the ground and tore off her pants and underclothes. When she screamed, he struck her in the face and said "Do you want to live?" As the victim cried, he raped her and then fled, taking four dollars from her. The court concluded that a rational trier of fact could find beyond a reasonable doubt that the defendant threatened conduct which was likely to result in death or serious injury to the victim, within the meaning of the terroristic threatening statute. The court also said that the statute imposed criminal liability for the use of words, changing the common-law rule that words alone do not constitute an assault; that the crime is complete when the actor threatens a crime, the commission of which would reasonably entail death or serious physical

injury, making it immaterial whether the threatened act is completed; and that even if the actor does not intend to actually carry out his threat, the threat itself creates certain identifiable injuries, such as mental distress or panic, that the criminal code should protect against.

But a terroristic threat conviction was reversed in *State v Reeves (1983) 234 Kan 250, 671 P2d 553,* affirming convictions of aggravated burglary, rape, and aggravated sodomy. The defendant entered the victim's house and bedroom while she was asleep, threatened her, forced her to perform oral sex on him, attempted to perform anal sex with her, raped her, and then left the residence. The court said that both terroristic threat or rape contain the element of threat or fear to intimidate or overcome the victim's will to resist the aggressor's demands; that all threats made by the defendant were incidental to the commission of sexual crimes, being used to induce fear, a required element of the offense of rape; and that therefore the terroristic threat conviction could not stand.

[*34i] Other offense

See *State v Alston (1994, Hawaii) 865 P2d 157,* § 24.

[*index]
INDEX

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4204/P1
JEO:...

Small scanner's legal priority

By Webb 1/19

D-Nobe

JG

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

gen Cat

AN ACT ...; **relating to:** threatening to cause death or great bodily harm to certain persons and providing a penalty. ✓

Analysis by the Legislative Reference Bureau

Current law prohibits a person from threatening to cause bodily harm to certain persons (including victims, witnesses, judges and certain state employes) or members of their family. In addition, current law prohibits a person from engaging in a course of conduct with intent to harass or intimidate another person, and specifically prohibits a person from using a telephone or computerized communication system to send threatening, abusive or harassing messages to another.

This bill prohibits a person from making certain threats against an officer or employe of a school district, a charter school or a private school (school officer or employe) or a family member of a school officer or employe. ✓ Specifically, the bill prohibits a person from communicating, by any means, a threat to cause death or great bodily harm to a school officer or employe or a family member of a school officer or employe, if all of the following apply:

1. The person knows or has reason to know that the threatened person is a school officer or employe or a family member of a school officer or employe.

2. The person intends the communication to be taken as a threat, regardless of whether he or she intended to carry out the threat.

3. The person communicates the threat with the intent to intimidate or frighten the threatened person, regardless of whether the threatened person was actually intimidated or frightened by the threat.

A person who violates the prohibition created by the bill may be fined not more than $10,000 or imprisoned for not more than ten years or both.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 947.017 of the statutes is created to read:

947.017 Threatening school officer or employe. (1) In this section:

(a) "Family member" means a spouse, child, stepchild, foster child, treatment foster child, grandchild, sibling or parent.

(b) "School officer or employe" means an officer or employe of a school district, as defined in s. 115.01 (3), a charter school, as defined in s. 115.001 (1), or a private school, as defined in s. 115.001 (3r).

(2) A person is guilty of a Class D felony if he or she communicates, by any means, a threat to cause death or great bodily harm to a school officer or employe or a family member of a school officer or employe and if all of the following apply:

(a) The person knows or has reason to know that the threatened person is a school officer or employe or a family member of a school officer or employe.

(b) The person intends the communication to be taken as a threat, regardless of whether the person intended to carry out the threat.

(c) The person communicates the threat with the intent to intimidate or frighten the threatened person, regardless of whether the threatened person was intimidated or frightened by the threat.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4204/P1dn
JEO:...

Pete Hanson:

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

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

2. There are current statutes that cover threats made to others, though they would not apply to the situation that occurred in Chippewa County, which I believe you said involved threatening letters. Specifically, it is a Class B misdemeanor to make a telephone call and threaten to inflict injury or physical harm to another (s. 947.012 (1) (a), stats.) or to send an e–mail or similar communication that threatens to inflict injury or physical harm to another (s. 947.0125 (2) (a), stats.). Also, a person commits a Class A misdemeanor if, with intent to harass or intimidate, he or she subjects a person to physical contact or engages in a course of conduct that harasses or intimidates another and if the person's acts are "accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm." Section 947.013 (1r) (a), stats.

None of these statutes specifically apply to threats to school officers or employes, who are the only persons protected by this draft. The legislature may, of course, as a matter of public policy, decide to provide school officers and employes with greater protection against threats. However, there are anomalies, in both the punishment of a defendant and in the treatment the victim's interests, between the provisions of the draft and the

current statutes mentioned above. For instance, if, over a period of time, a defendant harasses another person and makes "credible" threats that put that person in "reasonable fear" of being killed or subject to great bodily harm, the defendant is guilty only of a Class A misdemeanor (up to nine months in jail); on the other hand, a person who makes one threat to, say, a school teacher is guilty of a Class D felony, even if the person making the threat had no intention of carrying it out and even if the teacher was not actually frightened or intimidated by the threat.

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

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

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

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

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

Jefren E. Olsen
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–4204/P1dn
JEO:jlg:jf

January 18, 2000

Pete Hanson:

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

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

2. There are current statutes that cover threats made to others, though they would not apply to the situation that occurred in Chippewa County, which I believe you said involved threatening letters. Specifically, it is a Class B misdemeanor to make a telephone call and threaten to inflict injury or physical harm to another (s. 947.012 (1) (a), stats.) or to send an e–mail or similar communication that threatens to inflict injury or physical harm to another (s. 947.0125 (2) (a), stats.). Also, a person commits a Class A misdemeanor if, with intent to harass or intimidate, he or she subjects a person to physical contact or engages in a course of conduct that harasses or intimidates another and if the person's acts are "accompanied by a credible threat that places the victim in reasonable fear of death or great bodily harm." Section 947.013 (1r) (a), stats.

None of these statutes specifically apply to threats to school officers or employes, who are the only persons protected by this draft. The legislature may, of course, as a matter of public policy, decide to provide school officers and employes with greater protection against threats. However, there are anomalies, in both the punishment of a defendant and in the treatment the victim's interests, between the provisions of the draft and the

current statutes mentioned above. For instance, if, over a period of time, a defendant harasses another person and makes "credible" threats that put that person in "reasonable fear" of being killed or subject to great bodily harm, the defendant is guilty only of a Class A misdemeanor (up to nine months in jail); on the other hand, a person who makes one threat to, say, a school teacher is guilty of a Class D felony, even if the person making the threat had no intention of carrying it out and even if the teacher was not actually frightened or intimidated by the threat.

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

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

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

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

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

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

Committees:
Labor (Ranking Member)
Economic Development, Housing and Government Operations
Insurance, Tourism, Transportation and Corrections

DAVE ZIEN
STATE SENATOR
23rd Senate District

Member:
Joint Legislative Council
Council on Tourism
Transportation Projects Commission

MEMORANDUM

DATE: January 25, 2000

TO: Jefren E. Olsen, Legislative Attorney

FROM: Pete Hanson, Senator Zien's Office

RE: LRB-4204/P1

Thank you for acting so quickly to draft this bill for us. We have a couple changes to request. The last one adds to the scope of the bill.

Proposed changes to LRB-4204

1) Add to list in 947.017 (2): Threat must be related to duties of employment by school district.
2) Under 947.017 (2)(b), strike ", regardless of whether the person intended to carry out the threat.", and replace it with a ".".
3) Under 947.017 (2)(c), strike ", regardless of whether the threatened person was intimidated or frightened by the threat.", and replace it with "and the threatened person reasonably believed the threat to be sincere.".
4) Under 947.017 (2), change "class D felony" to read "class E felony."
5) Add new section to bill that would include threats to kill or cause bodily harm to others by way of violent acts other than bombing (which is currently the only terrorist-type threat covered as a felony, I believe). Suggestion: "A person is guilty of a Class E Felony if he or she communicates publicly, in writing, by phone or other electronic means, a threat to use a dangerous weapon or explosives to cause death, bodily harm or property damage in a school or on school grounds." Please define "school" to include kindergarten, primary and secondary schools, institutions of higher education, and licensed day care and head start facilities.

Regarding the definition of "family member," it looks fine the way it is.

Regarding threats to cause "bodily harm" only for threats to school officials, no, we do not wish to address that issue. We think the current definition of "great bodily harm" is a good match for the threats to school officials section of this bill.

In order to save time, please call with any questions. We would like to circulate this bill yet this week. Thank you again.

Office: State Capitol, P.O. Box 7882, Madison, WI 53707-7882 ★ 608-266-7511 ★ **Fax:** 608-267-6794 ★ **Toll-free Hotline:** 1-888-437-ZIEN (9436)
District: 21 E. Columbia St., Chippewa Falls, WI 54729 ★ 715-720-2300 ★ **E-mail:** Sen.Zien@legis.state.wi.us

940.32(2)(a)
(a) The actor intentionally engages in a course of conduct directed at a specific person that would cause a **reasonable** person to **fear** bodily injury to himself or herself or a member of his or her immediate family or to **fear** the death of himself or herself or a member of his or her immediate family.

940.32(2)(b)
(b) The actor has knowledge or should have knowledge that the specific person will be placed in **reasonable fear** of bodily injury to himself or herself or a member of his or her immediate family or will be placed in **reasonable fear** of the death of himself or herself or a member of his or her immediate family.

947.013(1r)(a)
(a) The act is accompanied by a credible threat that places the victim in **reasonable fear** of death or great bodily harm.

968.075(1)(a)4.
4. A physical act that may cause the other person **reasonably** to **fear** imminent engagement in the conduct described under subd. 1., 2. or 3.

LRB–3010/1
JEO:kmg:km

1999 SENATE BILL 191

June 10, 1999 – Introduced by Senators DARLING, PANZER, ROSENZWEIG and ROESSLER, cosponsored by Representatives SUDER, NASS, PLALE, MUSSER, BRANDEMUEHL, SERATTI, URBAN, CARPENTER and PLOUFF. Referred to Committee on Judiciary and Consumer Affairs.

AN ACT *to create* 947.017 of the statutes; **relating to:** threats to cause death, bodily harm or property damage in certain places and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from intentionally conveying a threat or false information, knowing the threat or information to be false, concerning an attempt or an alleged attempt being made or to be made to destroy property with explosives. This bill prohibits a person from threatening to use a dangerous weapon or explosives to cause death, bodily harm or property damage at a government building, a school, an institution of higher education, a structure housing a head start program or a day care center. A person who violates this prohibition may be fined not more than $10,000 or imprisoned for not more than two years or both, if the offense occurs before December 31, 1999, or may be fined not more than $10,000 or imprisoned for not more than five years or both, if the offense occurs on or after December 31, 1999.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 947.017 of the statutes is created to read:

947.017 Threat to cause death, bodily harm or property damage. (1) In this section, "governmental unit" means the United States, this state or one of its

political subdivisions, an instrumentality or corporation of any of the foregoing or a combination or subunit of any of the foregoing.

(2) A person is guilty of a Class E felony if the person threatens to use a dangerous weapon or explosives to cause death, bodily harm or property damage in or on the premises of any of the following:

(a) A structure owned, occupied or controlled by a governmental unit.

(b) A kindergarten or an elementary or secondary school.

(c) An institution of higher education, as defined in s. 108.02 (18).

(d) A structure in which a head start agency under 42 USC 9836 conducts a head start program.

(e) A day care center licensed under s. 48.65

(END)

State of Wisconsin
1999 – 2000 LEGISLATURE

LRB–4204/P1
JEO:jlg:jf

Today if possible (low scrambler's priority)

r.m.r.

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

regenerate

AN ACT *to create* 947.017 of the statutes; **relating to:** threatening to cause death or property damage or great bodily harm to certain persons or in certain places and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from threatening to cause bodily harm to certain persons (including victims, witnesses, judges and certain state employes) or members of their family. In addition, current law prohibits a person from engaging in a course of conduct with intent to harass or intimidate another person, and specifically prohibits a person from using a telephone or computerized communication system to send threatening, abusive or harassing messages to another.

This bill prohibits a person from making certain threats against an officer or employe of a school district, a charter school or a private school (school officer or employe) or a family member of a school officer or employe. Specifically, the bill prohibits a person from communicating, by any means, a threat to cause death or great bodily harm to a school officer or employe or a family member of a school officer or employe, if all of the following apply:

1. The person knows or has reason to know that the threatened person is a school officer or employe or a family member of a school officer or employe.

2. ~~The person intends the communication to be taken as a threat, regardless of whether he or she intended to carry out the threat.~~

3. The person communicates the threat with the intent to intimidate or frighten the threatened person, regardless of whether the threatened person was actually intimidated or frightened by the threat.

ANALYSIS INSERT (A)

also

mail: title: sub-sub
Threats to cause death or harm

ANALYSIS INSERT (B)

ANALYSIS INSERT (C)

against threats to school officers or employes or their family members

A person who violates the prohibition ~~created by the bill~~ may be fined not more than $10,000 or imprisoned for not more than ~~ten~~ five years or both.

ANALYSIS INSERT D

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS -1

SECTION 1. 947.017 of the statutes is created to read:

(B) ; threats to cause death or harm in certain places

947.017 Threatening school officer or employe. (1) In this section:

(a) "Family member" means a spouse, child, stepchild, foster child, treatment foster child, grandchild, sibling or parent.

(b) "School officer or employe" means an officer or employe of a school district, as defined in s. 115.01 (3), a charter school, as defined in s. 115.001 (1), or a private school, as defined in s. 115.001 (3r).

(E)

(2) A person is guilty of a Class ~~D~~ felony if he or she communicates, by any means, a threat to cause death or great bodily harm to a school officer or employe or a family member of a school officer or employe and if all of the following apply:

(a) The person knows or has reason to know that the threatened person is a school officer or employe or a family member of a school officer or employe.

INS -13

~~(b) The person intends the communication to be taken as a threat, regardless of whether the person intended to carry out the threat.~~

(c) The person communicates the threat with the intent to intimidate or frighten the ~~threatened person, regardless of whether the threatened person was intimidated or frightened by the threat.~~

INS -17

school officer or employe of the family member of a school officer or employe

(END)

ANALYSIS INSERT A:

This bill creates new prohibitions relating to threats to cause property damage to certain property and threats to cause bodily harm or death to certain persons.

Threats to cause property damage

Current law prohibits a person from intentionally conveying a threat or false information, knowing the threat or information to be false, concerning an attempt or an alleged attempt being made or to be made to destroy property with explosives. This bill prohibits a person from communicating a threat, with the intent that the communication be taken as a threat, to use a dangerous weapon or explosives to cause property damage in or on the premises of a school, an institution of higher education, a structure housing a head start program or a day care center. A person who violates this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both.

ANALYSIS INSERT B:

2. The school officer or employe is acting in the scope of his or her duties as a school officer or employe at the time of the threat or the threat is in response to any action taken by the school officer or employe while acting in the scope of his or her duties as a school officer or employe.

ANALYSIS INSERT C:

4. The school officer or employe was placed in reasonable fear of death or great bodily harm to himself or herself or to a family member, if the threat was made to the school officer or employe, or the family member of a school officer or employe was placed in reasonable fear of death or great bodily harm, if the threat was made to a family member of a school officer or employe.

ANALYSIS INSERT D:

Finally, the bill prohibits a person from communicating a threat, with the intent that the communication be taken as a threat, to use a dangerous weapon or explosives to cause death or great bodily harm to any person in or on the premises of a school, an institution of higher education, a structure housing a head start program or a day care center. A person who violates this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both.

INSERT 2–1:

SECTION 1. 301.048 (2) (bm) 1. a. of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

301.048 **(2)** (bm) 1. a. A crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (3), (4) or (5), 940.195 (3), (4) or (5), 940.20,

940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.43, 947.015, 947.017, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08 or 948.30.

History: 1991 a. 39; 1993 a. 79, 97, 227, 437, 479; 1995 a. 27; 1997 a. 27, 133, 181, 283; 1999 a. 9.

SECTION 2. 895.035 (4a) (a) 2. of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

895.035 **(4a)** (a) 2. An act resulting in a violation of s. 943.01, 943.02, 943.03, 943.05, 943.06 ~~or~~, 947.015 or 947.017.

History: 1985 a. 311; 1987 a. 27; 1993 a. 71; 1995 a. 24, 77, 262, 352; 1997 a. 27, 35, 205, 239, 252; 1999 a. 9; s. 13.93 (2) (c).

SECTION 3. 947.015 (title) of the statutes is amended to read:

947.015 (title) **Bomb scares; threats to cause property damage at certain places.**

History: 1977 c. 173.

SECTION 4. 947.015 of the statutes is renumbered 947.015 (1) and amended to read:

947.015 **(1)** Whoever intentionally conveys or causes to be conveyed, by any means, any threat or false information, knowing ~~such~~ the threat or information to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of a dangerous weapon or explosives is guilty of a Class E felony.

History: 1977 c. 173.

SECTION 5. 947.015 (2) of the statutes is created to read:

947.015 **(2)** (a) A person is guilty of a Class E felony if, with intent that the communication be taken as a threat, he or she communicates, by any means, a threat to use a dangerous weapon or explosives to cause property damage in or on the premises of any of the following places:

1. A kindergarten or an elementary or secondary school.

2. An institution of higher education, as defined in s. 108.02 (18).

3. A structure in which a head start agency under 42 USC 9836 conducts a head start program.

4. A day care center licensed under s. 48.65.

(b) A person may not be convicted of violating both par. (a) and sub. (1) if the threat was false.

INSERT 2–13:

(b) The school officer or employe is acting in the scope of his or her duties as a school officer or employe at the time of the threat or the threat is in response to any action taken by the school officer or employe while acting in the scope of his or her duties as a school officer or employe.

INSERT 2–17:

(d) The school officer or employe was placed in reasonable fear of death or great bodily harm to himself or herself or to a family member, if the threat was made to the school officer or employe, or the family member of a school officer or employe was placed in reasonable fear of death or great bodily harm, if the threat was made to a family member of a school officer or employe.

(3) A person is guilty of a Class E felony if, with intent that the communication be taken as a threat, he or she communicates, by any means, a threat to use a dangerous weapon or explosives to cause death or great bodily harm in or on the premises of any of the following places:

(a) A kindergarten or an elementary or secondary school.

(b) An institution of higher education, as defined in s. 108.02 (18).

(c) A structure in which a head start agency under 42 USC 9836 conducts a head start program.

(d) A day care center licensed under s. 48.65.

(4) A person may not be convicted of violating both subs. (2) and (3) for the same threat.

SECTION 6. 969.08 (10) (b) of the statutes is amended to read:

969.08 **(10)** (b) "Serious crime" means any crime specified in s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25, 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 947.017, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

NOTE: NOTE: Par. (b) is shown as affected by three acts of the 1997 legislature and as merged by the revisor under s. 13.93 (2) (c). NOTE:
History: 1971 c. 298; 1977 c. 449; 1979 c. 112; 1981 c. 183; 1985 a. 293 s. 3; 1987 a. 90, 332, 399, 403; 1991 a. 153, 269; 1993 a. 50, 92, 94, 227, 441, 445, 491; 1997 a. 143, 180, 295; s. 13.93 (2) (c).

SECTION 7. Initial applicability.

(1) This act first applies to offenses occurring on the effective date of this subsection.

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-4204/1
JEO:jlg:km

Soon!

2

r.m.r.

1999 BILL

regenerate

AN ACT *to renumber and amend* 947.015; *to amend* 301.048 (2) (bm) 1. a., 895.035 (4a) (a) 2., 947.015 (title) and 969.08 (10) (b); and *to create* 947.015 (2) and 947.017 of the statutes; **relating to:** threatening to cause death, bodily harm or property damage to certain persons or in certain places and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill creates new prohibitions relating to threats to cause property damage to certain property and threats to cause bodily harm or death to certain persons.

Threats to cause property damage

Current law prohibits a person from intentionally conveying a threat or false information, knowing the threat or information to be false, concerning an attempt or an alleged attempt being made or to be made to destroy property with explosives. This bill prohibits a person from communicating a threat, with the intent that the communication be taken as a threat, to use a dangerous weapon or explosives to cause property damage in or on the premises of a school, an institution of higher education, a structure housing a head start program or a day care center. A person who violates this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both.

Current law ~~also~~ prohibits a person from threatening to cause bodily harm to certain persons (including victims, witnesses, judges and certain state employes) or

INSERT title from C. 2

members of their family. In addition, current law prohibits a person from engaging in a course of conduct with intent to harass or intimidate another person, and specifically prohibits a person from using a telephone or computerized communication system to send threatening, abusive or harassing messages to another.

Threats to cause death or harm.

This bill prohibits a person from making certain threats against an officer or employe of a school district, a charter school or a private school (school officer or employe) or a family member of a school officer or employe. Specifically, the bill prohibits a person from communicating, by any means, a threat to cause death or great bodily harm to a school officer or employe or a family member of a school officer or employe, if all of the following apply:

1. The person knows or has reason to know that the threatened person is a school officer or employe or a family member of a school officer or employe.

2. The school officer or employe is acting in the scope of his or her duties as a school officer or employe at the time of the threat or the threat is in response to any action taken by the school officer or employe while acting in the scope of his or her duties as a school officer or employe.

3. The person communicates the threat with the intent to intimidate or frighten the ~~threatened person, regardless of whether the threatened person was actually intimidated or frightened by the threat~~.

4. The school officer or employe was placed in reasonable fear of death or great bodily harm to himself or herself or to a family member, if the threat was made to the school officer or employe, or the family member of a school officer or employe was placed in reasonable fear of death or great bodily harm, if the threat was made to a family member of a school officer or employe.

A person who violates the prohibition against threats to school officers or employes or their family members may be fined not more than $10,000 or imprisoned for not more than five years or both.

Finally, the bill prohibits a person from communicating a threat, with the intent that the communication be taken as a threat, to use a dangerous weapon or explosives to cause death or great bodily harm to any person in or on the premises of a school, an institution of higher education, a structure housing a head start program or a day care center. A person who violates this prohibition may be fined not more than $10,000 or imprisoned for not more than five years or both.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 301.048 (2) (bm) 1. a. of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

school officer or employe or the family member of a school officer or employe

301.048 **(2)** (bm) 1. a. A crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (3), (4) or (5), 940.195 (3), (4) or (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.285 (2) (a) 1. or 2., 940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 940.43 (1) to (3), 940.45 (1) to (3), 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.04, 943.06, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.43, 947.015, 947.017, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07, 948.08 or 948.30.

SECTION 2. 895.035 (4a) (a) 2. of the statutes, as created by 1999 Wisconsin Act 9, is amended to read:

895.035 **(4a)** (a) 2. An act resulting in a violation of s. 943.01, 943.02, 943.03, 943.05, 943.06 ~~or~~, 947.015 or 947.017.

INS 3-11

SECTION 3. 947.015 (title) of the statutes is amended to read:

947.015 (title) **Bomb scares; threats to cause property damage at certain places.**

SECTION 4. 947.015 of the statutes is renumbered 947.015 (1) and amended to read:

947.015 **(1)** Whoever intentionally conveys or causes to be conveyed, by any means, any threat or false information, knowing ~~such~~ the threat or information to be false, concerning an attempt or alleged attempt being made or to be made to destroy any property by the means of a dangerous weapon or explosives is guilty of a Class E felony.

SECTION 5. 947.015 (2) of the statutes is created to read:

947.015 **(2)** (a) A person is guilty of a Class E felony if, with intent that the communication be taken as a threat, he or she communicates, by any means, a threat

to use a dangerous weapon or explosives to cause property damage in or on the premises of any of the following places:

1. A kindergarten or an elementary or secondary school.

2. An institution of higher education, as defined in s. 108.02 (18).

3. A structure in which a head start agency under 42 USC 9836 conducts a head start program.

4. A day care center licensed under s. 48.65.

(b) A person may not be convicted of violating both par. (a) and sub. (1) if the threat was false.

SECTION 6. 947.017 of the statutes is created to read:

947.017 Threatening school officer or employe; threats to cause death or harm in certain places. (1) In this section:

(a) "Family member" means a spouse, child, stepchild, foster child, treatment foster child, grandchild, sibling or parent.

(b) "School officer or employe" means an officer or employe of a school district, as defined in s. 115.01 (3), a charter school, as defined in s. 115.001 (1), or a private school, as defined in s. 115.001 (3r).

(2) A person is guilty of a Class E felony if he or she communicates, by any means, a threat to cause death or great bodily harm to a school officer or employe or a family member of a school officer or employe and if all of the following apply:

(a) The person knows or has reason to know that the threatened person is a school officer or employe or a family member of a school officer or employe.

(b) The school officer or employe is acting in the scope of his or her duties as a school officer or employe at the time of the threat or the threat is in response to any

action taken by the school officer or employe while acting in the scope of his or her duties as a school officer or employe.

(c) The person communicates the threat with the intent to intimidate or frighten the school officer or employe or the family member of a school officer or employe.

(d) The school officer or employe was placed in reasonable fear of death or great bodily harm to himself or herself or to a family member, if the threat was made to the school officer or employe, or the family member of a school officer or employe was placed in reasonable fear of death or great bodily harm, if the threat was made to a family member of a school officer or employe.

(3) A person is guilty of a Class E felony if, with intent that the communication be taken as a threat, he or she communicates, by any means, a threat to use a dangerous weapon or explosives to cause death or great bodily harm in or on the premises of any of the following places:

(a) A kindergarten or an elementary or secondary school.

(b) An institution of higher education, as defined in s. 108.02 (18).

(c) A structure in which a head start agency under 42 USC 9836 conducts a head start program.

(d) A day care center licensed under s. 48.65.

(4) A person may not be convicted of violating both subs. (2) and (3) for the same threat.

SECTION 7. 969.08 (10) (b) of the statutes is amended to read:

969.08 **(10)** (b) "Serious crime" means any crime specified in s. 346.62 (4), 940.01, 940.02, 940.03, 940.05, 940.06, 940.08, 940.09, 940.10, 940.19 (5), 940.195 (5), 940.20, 940.201, 940.203, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.25,

940.29, 940.295 (3) (b) 1g., 1m., 1r., 2. or 3., 940.31, 941.20 (2) or (3), 941.26, 941.30, 941.327, 943.01 (2) (c), 943.011, 943.013, 943.02, 943.03, 943.04, 943.06, 943.10, 943.23 (1g), (1m) or (1r), 943.30, 943.32, 946.01, 946.02, 946.43, 947.015, 947.017, 948.02 (1) or (2), 948.025, 948.03, 948.04, 948.05, 948.06, 948.07 or 948.30.

SECTION 8. Initial applicability.

(1) This act first applies to offenses occurring on the effective date of this subsection.

(END)

INSERT 3–11:

SECTION 1. 938.208 (1) (a) of the statutes is amended to read:

938.208 **(1)** (a) Probable cause exists to believe that the juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), (1m) or (1r), 943.32 (2), 947.013 (1t), (1v) or (1x), 947.017, 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

History: 1995 a. 77, 352; 1999 a. 9.

SECTION 2. 938.34 (4m) (b) 1. of the statutes is amended to read:

938.34 **(4m)** (b) 1. The juvenile has committed a delinquent act that would be a felony under s. 940.01, 940.02, 940.03, 940.05, 940.19 (2) to (6), 940.21, 940.225 (1), 940.31, 941.20 (3), 943.02 (1), 943.23 (1g), (1m) or (1r), 943.32 (2), 947.013 (1t), (1v) or (1x), 947.017, 948.02 (1) or (2), 948.025 or 948.03 if committed by an adult.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; s. 1999 a. 9; 13.93 (2) (b).