

2007 DRAFTING REQUEST

Assembly Amendment (AA-AB282)

Received: 10/30/2007

Received By: phurley

Wanted: As time permits

Identical to LRB:

For: Sheryl Albers (608) 266-8531

By/Representing:

This file may be shown to any legislator: NO

Drafter: phurley

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Albers@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Threatening a school official

Instructions:

Create definition of "threat" in chapter 939.22

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	phurley 10/30/2007	wjackson 10/30/2007	pgreensl 10/30/2007	_____	lparisi 10/30/2007	lparisi 10/30/2007	

FE Sent For:

<END>

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/1	phurley	1/wlj 10/30	1/p/30 p8	1/p/30 p8			

FE Sent For:

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**ASSEMBLY AMENDMENT ,
TO 2007 ASSEMBLY BILL 282**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: before that line insert:

3 **"SECTION 1.** 939.22 (38m) of the statutes is created to read:

4 939.22 (38m) "Threat" means an expression of intention to do harm and may
5 be communicated orally, in writing, or by conduct. To constitute a "threat," under the
6 totality of circumstances, a reasonable person making the threat would foresee that
7 a reasonable person would interpret the threat as a serious expression to do harm."

8 **2.** Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1M".

9 (END)

2007 ASSEMBLY BILL 282

April 23, 2007 - Introduced by Representatives ALBERS, MOLEPSKE, MUSSER, HAHN, BERCEAU, VOS, NYGREN, TOWNSEND, GUNDERSON and HRAYCHUCK, cosponsored by Senators SCHULTZ, ROESSLER, OLSEN and A. LASEE. Referred to Committee on Criminal Justice.

1 **AN ACT** *to renumber and amend* 940.20 (5); and *to create* 940.20 (5) (b) 1.,
2 940.20 (5) (b) 2. and 940.20 (5) (b) 3. of the statutes; **relating to:** threatening
3 a school official.

Analysis by the Legislative Reference Bureau

Current law prohibits a person from intentionally causing bodily harm to a technical college district or school district officer or employee acting in his or her official capacity if the person knows that the victim is a technical college district or school district officer or employee.

This bill prohibits a person from intentionally causing bodily harm or threatening to cause bodily harm to a technical college district or school district officer or employee if, at the time of the harm or threat, all of the following are true: 1) at the time of the act or threat, the person knows or should have known that the victim is a technical college district or school district officer or employee; 2) the technical college district or school district officer or employee is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity; and 3) there is no consent by the person harmed or threatened.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE SHERYL ALBERS

FROM: Anne Sappenfield, Senior Staff Attorney

RE: 2007 Assembly Bill 282, Relating to Threatening a School Official

DATE: June 4, 2007

This memorandum describes 2007 Assembly Bill 282, relating to threatening a school official. Under the First Amendment to the U.S. Constitution, some threatening words are protected speech and, thus, may not be prosecuted under the provisions of Assembly Bill 282. Only "true threats" may be punished criminally. This memorandum also describes what constitutes a true threat.

CURRENT LAW

Current law prohibits a person from intentionally causing bodily harm to a technical college district or school district officer or employee acting in his or her official capacity if the person knows that the victim is a technical college district or school district officer or employee. The offense is a Class I felony punishable by imprisonment not to exceed 3 ½ years (maximum 1 ½ years in prison and two years of extended supervision) or a fine not to exceed \$10,000, or both.

ASSEMBLY BILL 282

Under Assembly Bill 282, it is a Class I felony to cause bodily harm *or to threaten* to cause bodily harm to a technical college district or school district officer or employee under all of the following circumstances:

- At the time of the act or threat, the actor knows or should have known that the victim is a technical college district or school district officer or employee.
- The technical college district or school district officer or employee is acting in an official capacity at the time of the act or threat or the act or threat is in response to any action taken in an official capacity.
- There is no consent by the person harmed or threatened.

TRUE THREATS

In *State v. Perkins*, the Wisconsin Supreme Court held that the following criteria must be met in order for a threat to be characterized as a "true threat" and, therefore, punished as a criminal act:

A true threat is a statement that a speaker would reasonably foresee that a listener would reasonably interpret as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech. It is not necessary that the speaker have the ability to carry out the threat. In determining whether a statement is a true threat, the totality of the circumstances must be considered.

[243 Wis. 2d 141, 626 N.W.2d 762, 767 (2001).]

The court further held that the factors to be taken into consideration in determining whether a threat is a true threat are the following:

- How the recipient and other listeners reacted to the alleged threat.
- Whether the threat was conditional.
- Whether the threat was communicated directly to its victim.
- Whether the maker of the threat had made similar statements to the victim on other occasions.
- Whether the victim had reason to believe that the maker of the threat had a propensity to engage in violence.

[*Id.* at 771.]

In *Perkins*, the defendant challenged the jury instructions for the offense of threat to a judge because they did not set forth instructions on what constitutes a true threat. In response to that case, the jury instructions for the offense of threat to a judge include the following definition of "threat" for jurors to follow in determining whether the defendant threatened to cause great bodily harm to the victim:

A "threat" is an expression of intention to do harm and may be communicated orally, in writing, or by conduct. This element requires a true threat. "True threat" means that a reasonable person making the threat would foresee that a reasonable person would interpret the threat as a serious expression to do harm. It is not necessary that the person making the threat have the ability to carry out the threat. You must consider all the circumstances in determining whether a threat is a true threat.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AS:ksm