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ACLU OF RI POSITION: OPPOSE

**TESTIMONY ON 25-H 5262,
RELATING TO CRIMINAL OFFENSES – THREATS AND EXTORTION
February 4, 2025**

This bill would make it a felony with a potential sentence of up to five years in prison for an individual to threaten any school employee with physical harm. We strongly urge rejection of this bill. Our opposition to this bill mirrors many of the reasons we are opposing a related bill being heard today, dealing with threats against government caseworkers.

We wish to begin by emphasizing that the ACLU of Rhode Island fully appreciates the concerns prompting this bill. We also agree that "true threats" have long been held not to be protected by the First Amendment and should be prosecuted. However, we believe the penalties in this legislation are unduly harsh, the law's current wording raises free speech concerns in light of its breadth, and the likely effect of the bill's implementation will be to coerce people to plea bargain even in instances when their conduct might not be illegal. We are especially concerned about its impact on young children and minors who may make idle threats that would now lead to felony charges and all that entails. It is also a destabilizing punishment when applied to parents who say unintended things in the heat of the moment. We briefly summarize our concerns below.

1. We believe that the law, as it is currently worded, raises serious constitutional concerns. At a minimum, it should be fixed before any consideration of expanding its reach is considered. As written, the law makes criminal a wide variety of hyperbolic comments that may be expressed by people in the heat of the moment and that would not be seen as true threats. The First Amendment requires that any such statute be narrowly drawn in order to prevent vast prosecutorial overreach.[1] While the government can prosecute someone who intentionally threatens another person with serious bodily harm, and whose words are reasonably perceived as threatening, the current law makes it a felony to make *any* threat of bodily harm, regardless of whether it could reasonably be perceived as threatening and regardless of the speaker's intent. It thus makes felons out of people who – whether in the throes of anger, passion, or drunkenness – make threats that nobody would take seriously and that are of a type uttered by people literally thousands of times a day. The law's broad language gives give enormous and arbitrary authority to law enforcement to arrest individuals for rhetorical excesses. Obviously, the more people that the law provides protection to, the greater the potential for its misuse.

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[1] In recent decision, the U.S. Supreme Court held that, to convict a person of making true threats, a state must show that the speaker had a subjective understanding as to whether the person to whom his words were directed would perceive them as threatening. *Counterman v. Colorado*, 600 U.S. 66 (2023).

2. We also have concerns about the felony penalties associated with the crime. For many years, the ACLU has been critical of the felonization of criminal conduct and its impact on the criminal justice system and efforts to stem the problem of mass incarceration. This particular conduct may deserve punishment, but does it warrant five years in prison and the consequences that flow from a felony record? In most instances, misdemeanor assault penalties would be more than sufficient to address the harm. In recent years, this committee has done much to address the problem of mass incarceration. It is essential to think twice before enacting more laws that create new felonies or expand the reach of existing ones.

3. We believe the seriousness of the penalty plays out in a troubling manner in another way. Passage of a bill like this will likely only provide the state a tool to engage in "charge stacking" – i.e., charging people with both this felony and a misdemeanor offense – and to coerce individuals into pleading guilty to the lesser offense, even if they have a good defense, due to the fears emanating from the ramifications of a felony conviction.

4. As the statute expands to include more occupations and professions within its scope, as this bill does, the pressure will be inevitable to add others. Especially in the polarized times we live in, all manner of occupations are under siege to a greater or lesser extent, as evident by another bill being heard today which would apply the same penalties to overwrought, and possibly mentally ill, clients who make ill-advised remarks against social workers. If outbursts against school principals deserve felony penalties, why not the same penalties on behalf of tax collectors, meter attendants, emergency room nurses, individuals providing abortion services, and on and on?

5. As with the "social worker" threat bill, we are deeply concerned about the people the bill will most likely apply to: in that instance, people with mental illness, and in this one, young students and parents. Because of their immaturity, young people can say stupid things that they don't mean; they shouldn't face five years in prison for that immaturity. By the same token, little is gained by breaking up a family when an irate parent makes comments that are way out of line but that are not legitimate threats.

In sum, true threats deserve punishment. But broadly worded laws that criminalize a wide array of protected speech and carry extremely harsh penalties should not be further expanded. Current criminal laws already provide appropriate penalties. For all these reasons, while sympathetic to its origins, the ACLU opposes this bill.