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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 24-H 8223, RELATING TO CRIMINAL OFFENSES – THREATS AND EXTORTION May 7, 2024

This bill would make it a felony with a potential sentence of up to five years in prison for an individual to threaten with physical harm a “state government caseworker or investigator.” For a number of reasons, the ACLU of Rhode Island opposes this legislation.

We do not mean to diminish the impact of assaults on social workers, and we also recognize 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 briefly summarize these 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 language is 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 enormous and arbitrary authority to law enforcement to arrest individuals for rhetorical excesses. Obviously, the more people that the law applies to, the greater the potential for its misuse.

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 deserves punishment, but does it warrant five years in prison and the consequences that flow from a felony record? In many instances, misdemeanor assault penalties would be more than

¹ In a recent decision, *Counterman v. Colorado*, 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. 600 U.S. 66 (2023).

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 a tool to the state to engage in “charge stacking” – i.e., charging individuals both with this felony and a misdemeanor offense like simple assault – or to coerce individuals into pleading guilty to a lesser offense, even if they have a good defense, due to the fears emanating from the ramifications of a felony conviction.

4. Finally, we are deeply concerned about the continued expansion of the felony assault statute to cover more and more occupations. Just this past month, the committee approved adding assaults of election officials to the statute, and another bill the committee has heard this session would apply the same penalties to overwrought parents who make ill-advised remarks against school officials. As the statute expands to include more occupations and professions within its scope, 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. If outbursts against election officials and caseworkers deserve felony penalties, why not the same protection for tax collectors, meter attendants, individuals providing abortion services, and on and on? Even as we acknowledge the atmosphere that has prompted the sincere intentions behind these bills, there is good reason to hesitate before expanding the reach of this law. It is especially problematic as applied to social workers and other “caseworkers,” as many of those violating this law in interactions with caseworkers may often have severe mental health problems.

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, the ACLU opposes this legislation.