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**ACLU OF RI POSITION: OPPOSE**

**TESTIMONY ON 24-H 7303 and 24-H 7447,**
**RELATING TO CRIMINAL OFFENSES – THREATS AND EXTORTION**
**February 27, 2024**

These two bills would make it a felony with a potential sentence of up to five years in prison for an individual to threaten with physical harm an election official, poll worker, school employee or their families based on their public duties. While this testimony focuses on H-7447, the arguments we raise apply to both bills.

We wish to begin by emphasizing that the ACLU of Rhode Island fully appreciates the concerns raised by election officials about the disturbing activities across the country in recent years aimed at individuals involved in the election process, and the severe impact it has had on a key element of our democratic system – the running of elections. 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. For these reasons, we are constrained to oppose this legislation. 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 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.

[1] In 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).

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. True threats certainly deserve 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 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" – e.g., charging them 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, as the statute expands to include more occupations and professions within its scope, as these two bills do, 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 H-7303, which would apply the same penalties to overwrought parents who make ill-advised remarks against school officials. If outbursts against school principals deserve felony penalties, why not the same protection for tax collectors, meter attendants, emergency room nurses, individuals providing abortion services, and on and on. Even as we acknowledge the atmosphere that has prompted the sincere intentions behind this bill, we believe there is good reason to hesitate before expanding the reach of this law.

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. For all these reasons, while deeply sympathetic to their origin, the ACLU opposes these bills.