



U.S. Department of Justice

United States Attorney
District of Montana

COPY

Leif M. Johnson
Acting United States Attorney

2601 Second Ave. North, 3200
Billings, Montana 59101

406-247-4630

October 14, 2021

Montana Attorney General,
All County Attorneys,
All Sheriffs,
Montana Office of Public Instruction,
Montana School Boards Association

Re: *Federal Action Regarding Threats Against School Boards, Administrators, Teachers, and School Staff Members*

Dear law enforcement or educational leaders:

In response to a nationwide rise in threats and acts of violence against our educational community, Attorney General Garland has directed the FBI and the United States Attorneys to partner with federal, state, local, and tribal leaders to address the problem. The Attorney General's directive does not seek to hinder anyone's free speech rights under the First Amendment, only to combat lawful threats and other criminal conduct.

I write to you pursuant to the Attorney General's directive. I have enclosed a short summary of federal statutes that may serve as a basis for a prosecution of such threats and violent conduct. If you believe that a person has violated one of these statutes, please feel free to contact the FBI. The FBI and the United States Attorney's Office will then collaborate with any interested parties to determine if a federal investigation and prosecution should commence.

The state of Montana has similar criminal laws against threatening and committing acts of violence against members of our educational community. It may be that an investigation and prosecution under those statutes more appropriately addresses individual cases. Where appropriate, however, the United States Attorney's Office stands ready to help address those cases that require a federal response.

Please feel free to contact me if you have any questions regarding this initiative.

Regards,

LEIF M. JOHNSON
Acting United States Attorney

Federal Crimes Involving Harassment, Intimidation, and Threats of Violence

Threat ¹ & Intimidation Statutes		
1. Conspiracy to Deprive Person of Civil Rights	18 U.S.C. § 241	(1) defendant entered into a conspiracy to injure, oppress, threaten, or intimidate another; and (2) defendant specifically intended by the conspiracy to hinder, prevent, or interfere with another's enjoyment of a right secured by the Constitution or the laws of the United States
2. Interference with Federally Protected Activities	18 U.S.C. § 245	(1) defendant used force or threat of force; (2) defendant willfully injured, intimidated, or interfered with a person, or attempted to do so; (3) defendant acted because of that person's race, color, religion, or national origin; and (4) the defendant acted because that person was engaged in one or more protected activities as defined by 18 U.S.C. §§ 245(b)(2)(A)-(F)
3. Interstate Extortion Threat	18 U.S.C. § 875(b)	(1) defendant knowingly sent a message in interstate or foreign commerce containing a true threat to kidnap or injure another person; and (2) defendant did so with intent to extort money or other thing of value.
4. Interstate Threat to Kidnap or Injure	18 U.S.C. § 875(c)	(1) defendant knowingly sent a message in interstate or foreign commerce; (2) the message contained a true threat to kidnap or injure another; and (3) defendant acted with subjective intent to injure or kidnap another

¹ To trigger a federal threat statute, the communication must be a "true threat," that is, a "threat" in which the speaker intends to communicate a serious expression of an intent to commit an act of unlawful violence to another. See *Virginia v. Black*, 538 U.S. 343 (2003). This requires a showing of a subjective, specific intent to threaten. See, e.g., *United States v. Bagdasarian*, 632 F.3d. 1113 (9th Cir. 2011).

Federal Crimes Involving Harassment, Intimidation, and Threats of Violence

5. Interstate threat to Injure Property or Reputation	18 U.S.C. § 875(d)	(1) defendant knowingly sent a message in interstate or foreign commerce containing a true threat to damage the reputation of, or the property of, another; and (2) defendant did so with intent to extort money or something of value
6. Mailing Threatening Communications	18 U.S.C. §§ 876(a)-(d)	*Same as §§ 875(a)-(d) but the threat is sent in the mail instead of in interstate or foreign commerce.
7. False Information and Hoaxes	18 U.S.C. § 1038	(1) defendant intentionally conveyed false or misleading information under circumstances in which such information may reasonably be believed; and (2) such information indicated that an activity had taken, was taking, or would take place that would constitute a violation of a specified federal statutes involving: destruction of aircraft or motor vehicles; biological weapons; chemical weapons; nuclear or radiological materials; explosives, firearms, shipping, terrorism, nuclear facilities, or aircraft piracy
8. Interstate Stalking	18 U.S.C. § 2261A(1)	(1) defendant traveled in interstate or foreign commerce, within the special maritime or territorial jurisdiction of the United States or into or out of Indian Country; (2) with intent to kill injure, harass, or place under surveillance with intent to kill injure harass, or intimidate another person; and (3) by such travel, placed the victim in reasonable fear of death or substantial bodily injury, or causes substantial emotional distress to the victim, a member of the victim's immediate family, or the victim's spouse or intimate partner
9. Cyberstalking	18 U.S.C. § 2261A	(1) defendant acted with intent to kill injure, harass, or place under surveillance with intent to kill injure harass, or intimidate another person; (2) defendant used the mail, any interactive computer service, electronic communication service, electronic

Federal Crimes Involving Harassment, Intimidation, and Threats of Violence

		Harassment Statutes	
			<p>communication system of interstate commerce, or any other facility of interstate or foreign commerce, and</p> <p>(3) defendant engaged in a course of conduct that places the victim in reasonable fear of death or serious bodily injury to the victim, member of victim's immediate family, or victim's spouse or intimate partner, or caused or attempted to cause or would be reasonably expected to cause substantial emotional distress to victim, member of victim's immediate family, or victim's spouse or intimate partner</p>
1.	Anonymous Telecommunications Harassment	47 U.S.C. § 223(a)(1)(C)	<p>(1) defendant contacted victim by telephone or telecommunications device;</p> <p>(2) the call was made from one state to another state;</p> <p>(3) defendant did not disclose his identity; and</p> <p>(4) defendant acted with intent to annoy, abuse, threaten or harass the victim</p>
2.	Repeated Telephone Calls	47 U.S.C. § 223(a)(1)(D)	<p>(1) defendant repeatedly contacted victim by telephone or telecommunications device;</p> <p>(2) the calls were made from one state to another state;</p> <p>(3) by the calls, the defendant caused the victim's telephone to repeatedly or continuously ring; and</p> <p>(4) defendant acted with intent to harass any person at the number called</p>
3.	Repeated Harassing Communication	47 U.S.C. § 223(a)(1)(E)	<p>(1) defendant repeatedly contacted victim by telephone or telecommunications device;</p> <p>(2) the calls were made from one state to another state;</p> <p>(3) some conversation ensued during the calls; and</p> <p>(4) defendant acted solely to harass the victim.</p>