

HOUSE BILL NO. 831

INTRODUCED BY MERCER, GOULD, O'HARA,
NATHE, SPAETH, CONNELLY

IN THE HOUSE

February 15, 1985	Introduced and referred to Committee on Judiciary.
February 18, 1985	Committee recommend bill do pass. Report adopted. Bill printed and placed on members' desks.
February 20, 1985	Second reading, do pass. Considered correctly engrossed.
February 21, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 22, 1985	Introduced and referred to Committee on Judiciary.
March 16, 1985	Committee recommend bill be concurrent in. Report adopted.
March 21, 1985	Second reading, concurred in.
March 23, 1985	Third reading, concurred in. Ayes, 48; Noes, 0. Returned to House.

IN THE HOUSE

March 25, 1985

Received from Senate.

Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 831

INTRODUCED BY *Marcus J. O'Hara* ~~NATHAN SPECK~~

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF INTIMIDATION TO LIMIT THE OFFENSE TO A THREAT TOWARD ANOTHER PERSON UNDER CIRCUMSTANCES WHICH REASONABLY TEND TO PRODUCE A FEAR THAT THE THREAT WILL BE ACCOMPLISHED; REVISING STATUTORY LANGUAGE TO CONFORM WITH THE REQUIREMENTS OF WURTZ V. RISLEY, 719 F2D 1438 (9TH CIR. 1983); AND AMENDING SECTION 45-5-203, MCA."

WHEREAS, section 45-5-203, MCA, provides that a person commits the offense of intimidation when, with the purpose to cause another to perform or omit the performance of any act, he communicates to another a threat to commit an act; and

WHEREAS, the language in section 45-5-203, MCA, is not narrowly drawn to punish only those threats that have a reasonable tendency to produce or instill fear in the victim, which threats traditionally have been punishable; and

WHEREAS, in Wurtz v. Risley, 719 F2d 1438 (9th Cir. 1983), the U.S. Ninth Circuit Court of Appeals held that subsection 45-5-203(1)(c), MCA, is aimed at "pure speech" rather than conduct; has an overbreadth that is real and

substantial in relation to the statute's legitimate sweep; has a chilling effect forbidden by the first amendment of the U.S. Constitution; and, in the absence of any narrowing construction or tightly drawn language, is void on its face for overbreadth; and

WHEREAS, in its holding in Wurtz v. Risley, the court said that the statutory language of subsection 45-5-203(1)(c), MCA, applied so broadly to threats of minor infractions, threats not reasonably likely to induce a belief that the threats would be carried out, and threats unrelated to any induced or threatened action, that a great deal of protected speech was brought within the statute; and

WHEREAS, the court in Wurtz v. Risley did not address the issue of overbreadth in the remainder of section 45-5-203, MCA, but in its dicta said that a threat must be distinguished from what is constitutionally protected speech, and that threats punishable without violation of the first amendment must contain the reasonable tendency that the threat will produce or instill in the victim fear that the threat will be carried out; and

WHEREAS, section 45-5-203, MCA, may contain language that defines elements of the offense of intimidation so that the statute applies too broadly or infringes on protected speech.

THEREFORE, the Legislature of the State of Montana



INTRODUCED BILL HB 831

1 finds it appropriate to amend section 45-5-203, MCA.

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 Section 1. Section 45-5-203, MCA, is amended to read:

5 "45-5-203. Intimidation. (1) A person commits the
6 offense of intimidation when, with the purpose to cause
7 another to perform or to omit the performance of any act, he
8 communicates to another, under circumstances which
9 reasonably tend to produce a fear that it will be carried
10 out, a threat to perform without lawful authority any of the
11 following acts:

12 (a) inflict physical harm on the person threatened or
13 any other person ~~or-on-property;~~

14 (b) subject any person to physical confinement or
15 restraint; or

16 (c) commit any ~~criminal-offense;~~ felony.

17 ~~(d)--accuse-any-person-of-an-offense;~~

18 ~~(e)--expose---any---person---to--hatred,--contempt,--or~~
19 ~~ridicule,--or~~

20 ~~(f)--take-action-as-a-public-official-against-anyone-or~~
21 ~~anything,--withhold-official-action,--or-cause-such-action--or~~
22 ~~withholding.~~

23 (2) A person commits the offense of intimidation if he
24 knowingly communicates a threat or false report of a pending
25 fire, explosion, or disaster which would endanger life or

1 property.

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3 (3) A person convicted of the offense of intimidation
4 shall be imprisoned in the state prison for any term not to
5 exceed 10 years or be fined an amount not to exceed \$50,000,
or both."

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 831

INTRODUCED BY

Connelly *Moran* *Shak* *O'Hara* *NATH - Spack*

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING THE OFFENSE OF INTIMIDATION TO LIMIT THE OFFENSE TO A THREAT TOWARD ANOTHER PERSON UNDER CIRCUMSTANCES WHICH REASONABLY TEND TO PRODUCE A FEAR THAT THE THREAT WILL BE ACCOMPLISHED; REVISING STATUTORY LANGUAGE TO CONFORM WITH THE REQUIREMENTS OF WURTZ V. RISLEY, 719 F2D 1438 (9TH CIR. 1983); AND AMENDING SECTION 45-5-203, MCA."

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SECOND READING

HB 831



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 18 ~~(e) expose any person to hatred, contempt, or~~
 19 ~~ridicule; or~~
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 23 (2) A person commits the offense of intimidation if he
 24 knowingly communicates a threat or false report of a pending
 25 fire, explosion, or disaster which would endanger life or

1 property.
 2 (3) A person convicted of the offense of intimidation
 3 shall be imprisoned in the state prison for any term not to
 4 exceed 10 years or be fined an amount not to exceed \$50,000,
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-End-

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