



LEGAL PROTECTIONS FOR PUBLIC HEALTH OFFICIALS

California Fact Sheet

Threatening Certain Public Officials or Their Immediate Families


Nationwide, state and local public health officials working to protect the public from COVID-19 are on the receiving end of threatening and harassing conduct for simply fulfilling their duty to protect the public health. In response, the Network conducted research to examine whether the states and Washington, D.C., have criminal statutes punishing individuals who impede public health officials' duties with such behavior. Our research is presented in this [chart](#). Many states have adopted statutes to protect public officials generally; included here are those with broad enough language to include public health officials. However, we have also included the three states with laws that if broadened, would encompass public health officials, namely, Illinois, North Carolina, and Vermont. While 35 states and Washington, D.C., have such a statute, the remaining 15 states either do not have a statute protecting government officials in these circumstances or do not have one protecting public health officials. Of the 35 states and Washington, D.C., all but two, Louisiana and Oklahoma, include protections for state and local officials. Below is more information on California's relevant law.

West's Ann.Cal.Penal Code § 76, Threatening Certain Public Officials or Their Immediate Families

(a) Every person who knowingly and willingly threatens the life of, or threatens serious bodily harm to, any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, or the staff, immediate family, or immediate family of the staff of any elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms, with the specific intent that the statement is to be taken as a threat, and the apparent ability to carry out that threat by any means, is guilty of a public offense, punishable as follows:

(1) Upon a first conviction, the offense is punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both that fine and imprisonment.

(2) If the person has been convicted previously of violating this section, the previous conviction shall be charged in the accusatory pleading, and if the previous conviction is found to be true by the jury upon a jury trial, or by the court upon a court trial, or is admitted by the defendant, the offense is punishable by imprisonment pursuant to subdivision (h) of Section 1170.



(b) Any law enforcement agency that has knowledge of a violation of this section involving a constitutional officer of the state, a Member of the Legislature, or a member of the judiciary shall immediately report that information to the Department of the California Highway Patrol.

(c) For purposes of this section, the following definitions shall apply:

(1) “Apparent ability to carry out that threat” includes the ability to fulfill the threat at some future date when the person making the threat is an incarcerated prisoner with a stated release date.

(2) “Serious bodily harm” includes serious physical injury or serious traumatic condition.

(3) “Immediate family” means a spouse, parent, or child, or anyone who has regularly resided in the household for the past six months.

(4) “Staff of a judge” means court officers and employees, including commissioners, referees, and retired judges sitting on assignment.

(5) “Threat” means a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(d) As for threats against staff or immediate family of staff, the threat must relate directly to the official duties of the staff of the elected public official, county public defender, county clerk, exempt appointee of the Governor, judge, or Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

(e) A threat must relate directly to the official duties of a Deputy Commissioner of the Board of Prison Terms in order to constitute a public offense under this section.

Relevant Definitions

West's Ann.Cal.Government Code §82048, Public Official

“Public official” means every member, officer, employee or consultant of a state or local government agency.

Penalties

West's Ann.Cal.Penal Code § 76, Threatening Certain Public Officials or Their Immediate Families

Up to 1 year imprisonment

West's Ann.Cal.Penal Code § 76, Threatening Certain Public Officials or Their Immediate Families

\$5,000 maximum fine


Summary

A person who threatens the life of or serious bodily harm to a public official or his/her immediate family member faces imprisonment for up to 1 year and a \$5,000 maximum fine. “Public official” is defined as any member, officer, employee or consultant of a state or local government agency.

Template for Notifying Violators

Below is a sample template for notifying individuals regarding their conduct relative to the code.

West's Ann.Cal.Penal Code § 76 prohibits the threatening of life or serious bodily harm to a public official or his/her immediate family. [insert here a description of the conduct with a date—for example: On August 28, 2020, you sent an



email to Dr. X, the Secretary of Health for California threatening to come to her home and harm her.] *This may constitute a violation of § 76. If convicted, you face a fine of up to \$5,000 and imprisonment up to 1 year.*

- If the conduct is extreme, add: *We have notified the [insert proper law enforcement agency] of this conduct.*
- If the conduct does not rise to the level of reporting, add: *Should you continue with this conduct, we may report the matter to [insert law enforcement agency].*