

Overview of Federal Criminal Laws Prohibiting Threats and Harassment of Election Workers

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Following the 2020 elections, the Department of Justice reported a significant increase in threats of violence toward individuals who administer elections, [identifying](#) more than 850 reported incidents of threats and harassment targeting election workers for their work. This Legal Sidebar provides an overview of federal and state laws prohibiting threats and harassment against individuals responsible for administering elections, including election officials, workers, and volunteers at the federal, state, and local levels. The Sidebar also provides a brief overview of potential constitutional concerns related to the federal prosecution of individuals for threats and harassment to election workers, and considerations for Congress if it considers supplementing existing laws that address threats to election workers. (Further information on election worker safety and privacy policies, including a summary of relevant legislation introduced in the 117th Congress, is found in [this CRS Insight](#).)

Federal Law Overview

Constitutional Authority

[Article 1, Section 4](#) of the U.S. Constitution states, “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators.” While the states have primary responsibility for administering elections, the federal government maintains significant [authority](#) over elections including safeguarding the safety and integrity of congressional elections. Congressional power to regulate [presidential elections](#) is broad, though not as clearly established as the power over House and Senate elections, as [Article II, Section 1, cl. 4](#) provides only that Congress may determine the “time” of choosing presidential electors. Furthermore, the Supreme Court has [held](#) that “[t]he importance of [the presidential] election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated,” and that “Congress, undoubtedly, possesses that power . . . to preserve the . . . institutions of the general government from impairment or destruction”

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Congress does not have general regulatory authority over state and local elections, but it may still exercise its power over such entities in several contexts. For example, Congress has the authority to prevent unconstitutional voting discrimination in a state or local election. Relying on its Spending Clause authority, it might also condition the receipt of [federal funds](#) for state or local elections on compliance with federal requirements. Congress's authority to legislate regarding these various issues derive, in addition to its Article I powers, principally from the [Fourteenth](#) and [Fifteenth Amendments](#).

Relevant Statutes and Recent Cases Related to Violence Against Election Workers

Federal jurisdiction over [election crimes](#), such as fraud, campaign finance, and voter suppression, can be established through a variety of means including, but not limited to: the presence of a candidate for federal office on the ballot in the election in question, interference with the work of election officials, interference with a constitutional right, or the use of interstate commerce in the accomplishment of a crime.

In contrast, the laws available to federal law enforcement for protecting election workers from threats and harassment depend on the defendant's conduct. [18 U.S.C. § 245](#) addresses interference in a broad array of federal protected activities including voting, and prohibits threats to poll watchers and election officials in § 245(b)(1)(A). While the statute also [addresses](#) racially-motivated threats, discriminatory intent is not a necessary element of § 245(b)(1)(A). In 2020, a defendant [pleaded guilty](#) to violating § 245 for using racially-motivated threats against a candidate to interfere with an election.

Section 245 requires the Attorney General, the Deputy Attorney General, the Associate Attorney General, or a specially designated Assistant Attorney General to certify that federal prosecution of a case is in the public interest and necessary to secure substantial justice. According to the Senate Report [accompanying](#) legislation adding § 245, the certification process was consistent with a federal practice that: "even where Federal law has been adopted, enforcement generally has been deferred to the States wherever possible." [DOJ guidance](#) further indicates that in practice, the certification process considers whether state or local law enforcement "either cannot or will not[] effectively enforce the applicable state law, thereby creating an overriding need for federal intervention" to uphold the public's interest in addressing election threats.

Other federal laws which may address threats or harassment of election workers or other government officials administering elections include:

- [18 U.S.C. § 115](#), which prohibits threats "to assault, kidnap or murder" federal officials, employees, or their family members with the "intent to impede, intimidate, or interfere with" the performance of official duties, or in retaliation for official duties;
- [18 U.S.C. § 610](#), which prohibits intimidating or threatening federal employees to engage in or to not engage in "any political activity";
- [18 U.S.C. § 876](#), which prohibits knowingly sending by mail "any communication . . . addressed to any other person and containing any threat to kidnap any person or any threat to injure" and includes additional penalties for mailing threats to federal officials;
- [18 U.S.C. § 1503](#), which prohibits "corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes or endeavors to influence, obstruct, or impede, the due administration of justice";
- [18 U.S.C. § 1505](#), which prohibits the obstruction of justice, including by threats, for any proceeding before a U.S. agency or a congressional investigation;
- [18 U.S.C. § 1512](#), which prohibits threatening or intimidating a witness in an official proceeding to withhold testimony, tamper with evidence, or prevent someone from reporting a federal offense to law enforcement;

- [52 U.S.C. § 20511](#), which provides criminal penalties for any person, including an election official from, among other things, “knowingly and willfully intimidat[ing], threat[ening], or coerc[ing] or attempt[ing] to intimidate, threaten, or coerce any person for . . . urging or aiding any person” in voting or registering to vote in a federal election; and
- [52 U.S.C. § 10307](#), which prohibits persons acting under the color of law or otherwise from intimidating, threatening, or coercing any person “for urging or aiding any person to vote or attempt to vote” or for enforcing the right to vote.

Conduct by Government Officials

Some federal laws address interference with elections by those acting under the color of law. In addition to 18 U.S.C. § 245 discussed above, which applies “whether or not [the offender is] acting under color of law,” laws specifically dealing with the conduct of government officials or those using government resources include:

- [18 U.S.C. § 592](#), which prohibits stationing “troops or armed men” by military or federal officials at the polls in a general or special election except when necessary “to repel armed enemies of the United States”;
- [18 U.S.C. § 593](#), which prohibits members of the military from interfering “in any manner with an election officer’s discharge of his duties”;
- [18 U.S.C. § 595](#), which prohibits government employees from using official authority in connection with federally financed activity to interfere with or affect a federal election; and
- [18 U.S.C. § 598](#), which prohibits the use of congressional appropriations “for the purpose of interfering with, restraining, or coercing” any person in the exercise of the right to vote.

Threats or Intimidation Against Voters

Federal laws which directly address the intimidation of voters may also be relevant in addressing crimes targeting election workers if voters were also intimidated from voting by the conduct at issue. Criminal laws addressing the intimidation of voters include, in addition to 18 U.S.C. § 245 and several other laws previously mentioned:

- [18 U.S.C. § 241](#), which makes it unlawful to “conspire to injure, oppress, threaten, or intimidate any person” exercising a constitutional right, including the right to vote;
- [18 U.S.C. § 242](#), which prohibits willfully acting under government authority to deprive individuals of the right to vote; and
- [18 U.S.C. § 594](#), which prohibits threatening or intimidating any person for the purpose of interfering with the right to vote, among others.

Relevant Laws of General Applicability

[18 U.S.C. § 875\(c\)](#) prohibits, among other things, “transmit[ting] in interstate or foreign commerce any communication containing any threat” to kidnap or injure another person. The interstate or foreign commerce requirement of § 875(c) restricts its use to cases where an individual has transmitted a communication containing a threat across state or country lines. Courts have [held](#) that the requirement that the threat be communicated in interstate commerce should be read “literally: once the communication crosses state lines, however briefly, the jurisdictional element is satisfied even if the sender and recipient are both located in the same state.” As to the mental state requirement, the Supreme Court has not specified the mens rea for § 875(c), though it has [stated](#) that while, “negligence is not sufficient” to

support a conviction, the scienter requirement is satisfied “if the defendant transmits a communication for the purpose of issuing a threat, or with knowledge that the communication will be viewed as a threat.” In some recent cases, federal prosecutors have relied on 18 U.S.C. § 875(c) to address threats against election workers and other public officials. For example, in 2022, the DOJ Election Threats Task Force [charged](#) an individual under § 875(c) for allegedly posting communications on the website Craigslist threatening election officials in Georgia.

Other laws that have been used to [charge individuals](#) for threatening election officials or candidates include [47 U.S.C. § 223](#), which prohibits, among other things, knowingly making an interstate communication and transmitting “any comment, request, suggestion, proposal, image, or other communication which is obscene” with the intent to abuse, threaten, or harass another person; [18 U.S.C. § 2261A\(1\)](#), which prohibits interstate stalking; and [18 U.S.C. § 2261A\(2\)](#) which prohibits cyberstalking. Section 2261A(1) and (2) prohibitions require an intent to kill, injure, harass, or intimidate another person, and that the conduct “places that person in reasonable fear of the death of” or “serious bodily injury to” themselves, a family member, partner, or pet. The statute also forbids the same conduct if it “causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress.”

Sentencing Guidelines

United States Federal Sentencing Guidelines enhancements may also be relevant in cases addressing threats against election officials. The Guidelines make adjustments to the base offense level for threat or harassment offenses on account the specific characteristics of the crime. For example, the Guidelines’ official victim adjustment, [§3A1.2](#), provides enhancements of up to 3 to 6 sentencing levels “[i]f the victim was a government officer or employee; a former government officer or employee; or a member of the immediate family of a person described . . . and the offense of conviction was motivated by such status”

First Amendment Considerations

In a criminal case where a defendant’s speech is at issue, the constitutionality of the prosecution may depend on whether the speech is considered a “[true threat](#).” [The First Amendment](#) states, “Congress shall make no law . . . abridging the freedom of speech” The First Amendment protects to most forms of political hyperbole, [safeguarding](#) the public’s interest in debate on issues that is, “uninhibited, robust, and wide-open, and that [] may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” For example, threats of violence directed at government officials [do not necessarily reach](#) the level of a true threat. Conversely, true threats outside of constitutional protection can [occur](#) when the speaker “means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.”

At times, law enforcement has [struggled](#) to assess when speech crosses over from protected political hyperbole to a true threat. The Supreme Court has [stated](#) that a speaker does not need to intend to carry out violence to create a true threat. The speech may be proscribed when the speaker communicates the threat with the intent to place the victim in fear of bodily harm or death. For additional information on unprotected speech, see [this CRS In Focus](#).

State Law Overview

Several states have enacted or introduced proposals to address threats and intimidation against election workers, supplementing [existing prohibitions](#). While this Legal Sidebar does not survey the laws protecting election workers in all 50 states, some examples are noted here.

[Oregon](#) enacted a law in 2022, for instance, allowing election workers to have their home addresses exempted from disclosure as public records while also establishing new criminal penalties for harassing election workers. [Maine](#) enacted a law that criminalizes intentionally interfering “by force, violence or intimidation or by any physical act with any public official” performing an official election function. [Vermont](#) enacted a law that, among other things, increased criminal penalties for threats at polling places during elections, and threats to intentionally terrify, intimidate, or unlawfully influence election officials. A [Colorado](#) law prohibits, among other things, threatening or doxing election officials and workers. Other recent proposals include a [Michigan](#) bill prohibiting intimidating election workers and a [Washington](#) bill prohibiting harassing election officials.

Some states have taken approaches to criminalizing speech that include elements relevant to threatening government employees, institutions, or public safety. For example, several states including [Georgia](#), [Nebraska](#), [Pennsylvania](#), and [Wisconsin](#), criminalize “terroristic threats,” including by prohibiting threats to terrorize another, cause an evacuation, or, in certain states, causing serious public inconvenience.

Considerations for Congress

The targeting of election workers and recent correlated poll worker [shortages](#) in several states may make the current federal statutory protections for election workers an area of interest for members of Congress. Several [proposals](#) introduced in the 117th Congress include provisions establishing additional federal offenses for crimes against election workers, and also expanding existing offenses to include more types of election workers and election activities (S. 4; H.R. 777; S. 2093; H.R. 4064/S. 2155; H.R. 5053/S. 2626; S. 2747; S. 2928; H.R. 5746; H.R. 6872/S. 3142). Legislation introduced in the 117th Congress also would increase statutory privacy protections for election officials (S. 2093; H.R. 4064/S. 2155; H.R. 5314; H.R. 5746; S. 2747). Many of these proposals include some combination of related policies, such as increased funding for the safety of election workers.

As cases are brought by federal prosecutors responding to the increase in reported threats since 2020, the outcomes of these prosecutions may shed light on the challenges law enforcement faces in addressing these crimes. In 2021, DOJ launched the [Election Threats Task Force](#) “to address the rise in threats against election workers, administrators, officials, and others associated with the electoral process.” On June 16, 2022, the Task Force [secured](#) its first conviction, involving an individual who had threatened Colorado’s Secretary of State on Instagram. Although [some cases](#) addressing conduct during the 2020 election cycle have been resolved, DOJ’s increased focus in this area and resulting judicial decisions may help clarify how existing federal statutes apply to threats against election officials.

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