



# Judicial Impact Statement

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## Judicial Assaults 128th General Assembly

### H.B. 103 Sponsors

Representative Lorraine Fende  
Representative Sandra Stabile Harwood

### Status

Senate Judiciary Committee

### Version

As Introduced

### H.B. 89 Sponsor

Representative Jim Zehringer

### Status

House Judiciary Committee

### Version

As Introduced

### TITLE INFORMATION

To amend Title 29 of the Ohio Revised Code to ensure that the penalty for assaulting a judge is treated the same as assaulting a peace officer.

### IMPACT SUMMARY

The *2009-2010 Legislative Platform* of the Ohio Judicial Conference seeks statutory changes to reduce assaults and threats against Ohio judges for the decisions they make on behalf of the public. This will serve the state's interest in maintaining justice, improve the security of Ohio judges and promote trust and public confidence in the judicial system.

### BACKGROUND

The 126<sup>th</sup>, 127<sup>th</sup>, and 128<sup>th</sup> General Assemblies have proposed legislation to enhance the penalty for assaulting or threatening a judge. The 126<sup>th</sup> General Assembly considered Senate Bill 391, sponsored by Steve Austria; the 127<sup>th</sup> General Assembly considered Senate Bill 100 (sponsored by Steve Austria) and House Bill 265 (sponsored by Lorraine Fende), and the 128<sup>th</sup> General Assembly is in the process of considering House Bill 89 (sponsored by Jim Zehringer) and House Bill 103 (sponsored by Lorraine Fende).

### What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

These reforms have been introduced at least in part because legislators have recognized the need for legislation because of an assault, threat, or other illegal action against a local judge in the legislator's home district. The Ohio Judicial Conference has also been aware of an increased level of threats and assaults against judges in Ohio and across the United States as citizens begin to view judges as a target for retaliation or intimidation because of the important role that judges play in the maintenance of the American justice system. Indeed, the U.S. Marshalls Service documents that threats and other harassing communications against federal court

personnel has more than doubled in recent years.

The following Ohio judges have come forward to testify before the Ohio General Assembly regarding the need for this legislation as both a punishment and a deterrent to assaults on judges as judges.

- Judge Michael McClurg (Darke County Probate/Juvenile Court) was physically assaulted in the courthouse during the recess of a hearing for non-support on February 15, 2007.
- Retired Judge Catherine Barber received verbal threats while serving as judge of the Fairborn Municipal Court in Greene County.
- Judge Robert Hoover (Licking County Juvenile Court) and his family received written threats, signed with a blood oath, from a juvenile while that juvenile was in prison. Judge Hoover also had a fake bomb placed on his car.
- Judge Michael Cicconetti (Painesville Municipal Court, Lake County) and his family received a bomb threat.

These experiences are horrible for the judge as well as disturbing to the citizens of the counties where the violence or threats take place.

Unfortunately, these attacks and threats against judges and their families are not isolated events, and the Ohio Judicial Conference has made the issue of judicial attacks part of its legislative platform in both the 127<sup>th</sup> and the 128<sup>th</sup> General Assembly.

We are pleased that legislators like Steve Austria (R), Lorraine Fende (D), and Jim Zehringer (R) have introduced legislation to deal with this problem. These bills have numerous co-sponsors in the General Assembly and have garnered bi-partisan support. We hope that all legislators will support legislation in this area. We believe this change will improve Ohio's capacity to deal more effectively with crimes against judges and magistrates. We cannot allow these violent episodes to take place and erode the confidence of Ohio citizens in the security of the judiciary.

## **JUDICIAL IMPACT**

Provides Special Treatment for the Office but not Special Status for the Person. The Ohio Judicial Conference has a long standing position of opposing special status in the law. We have frequently cautioned the Ohio General Assembly against enacting legislation that recognizes distinctions in the law because such distinctions undermine the equal application of the law and impair the fair administration of justice. We recognize that on its surface this may appear to be legislation of the sort that Ohio judges have opposed in the past, but we believe this legislation does not carve out a special status for judges or provide judges with special treatment not enjoyed by other residents.

Under this legislation, a criminal who attacks or threatens a judge would be punished in the same manner and with the same result as currently provided under the appropriate Revised Code sections

for assaults, intimidations, or other crimes. In other words, if a criminal is robbing a store and a judge is assaulted during the commission of that crime, then the criminal would be charged with assault. The criminal would not receive one punishment for assaulting some of the people and a higher sentence for assaulting the judge. The judge's injury would be valued no greater under the law than any other citizen's injury.

Only if the judge were singled out and assaulted because of the fact the judge serves as a judge would the punishment be elevated. This is not special treatment for the individual judge, but it is a different crime altogether. The legislation we support views the judge as a symbolic representation of the citizenry writ large. When a criminal knowingly attacks a judge, the criminal is making an attack against the very justice system that defends the rule of law and preserves justice for all citizens. Judges serve the people of Ohio and in that capacity the people of Ohio deserve to have their judges protected from threats or abuse in a special way that distinguishes the person from the office that the person holds.

Enhances Public Confidence in the Judicial System. The voters elect judges to serve the state's interest in maintaining justice. Judges apply the law that the citizens have enacted through their representative bodies. Citizens do not want those elected officials and their families to be threatened and assaulted for the decisions judges have made on behalf of the public. To permit these intimidations and retributions against judges to take place is to allow the criminals to control and undermine the justice system as a whole. Threats and assaults of any individual is a crime, but when the motivation is intimidation or retribution for acting in the place of the people of the state, it should be a crime of an even higher order. It is a crime against the individual as well as a threat to a constitutional branch of government, a branch that is essential to the entire foundation of our democratic form of government. We cannot tolerate such an act of violence that is both directed at an individual and at our democratic way of life, and should ensure that the punishment reflects the dual nature of this crime. Legislation that deals with judicial assaults will improve the security of Ohio judges, promote safety in Ohio courthouses, and promote public trust and confidence in the judicial system.

## RECOMMENDATIONS

CONTRASTS BETWEEN HOUSE BILL 89 AND HOUSE BILL 103. The Ohio Judicial Conference believes that House Bill 89 and House Bill 103 differ in the following significant respects:

1. House Bill 89 has the advantage of expanding the covered class to include prosecutors as well as judges and magistrates. This is accomplished by changing references from peace officers to law enforcement officers. The Ohio Prosecutor's Association (John Murphy) has stated that they will oppose expanding the special class if it only includes judges and magistrates, which is the case with House Bill 103. By expanding the protected class to include prosecutors, House Bill 89 has a clear advantage.
2. House Bill 89 distinguishes between a random act of violence where the victim just happens to be a judge and an intentional act of violence against a judge because s/he is a judge. Judges prefer

legislation that is narrowly drawn and that captures within its net only those offenders who knowingly commit assaults against a judge or magistrate. We believe House Bill 89 correctly adds this clarification to statutes dealing with felonious assault [Section 2903.11 (D)(1)], aggravated assault [Section 2903.12 (B)], assault [Section 2903.13 (C)(3),(4) and (5)], and aggravated menacing [Section 2903.21 (B)].

3. House Bill 89 consolidates and clarifies existing law, while House Bill 103 creates a new threatening offense and section. Instead of creating a new and separate section 2903.23 for threatening a judge, we prefer an approach that revises and clarifies existing Section 2921 that deals with intimidation and retaliation.
  - a. We support a change in the definition section (2921.01) to include judges and magistrates, their immediate family members, and their unborn. [Note: There may not be a need to add family and unborn to the definition, if you use broad “any person or property” language as suggested below in the changes to Section 2921.05.]
  - b. We support a change in the intimidation section (2921.03) to clarify that it is illegal to “knowingly and by force or by unlawful threat of harm to ... attempt to influence, intimidate, or hinder the public servant who is a judge or magistrate in the discharge of the[ir] ... official duties.” We also support House Bill 89’s clarification that “unlawful threat” is one that is direct or indirect/by proxy.
  - c. We support a change in the retaliation section (2921.05) to eliminate “purposely” to clarify that it is illegal to “knowingly and by force” to make an unlawful threat of harm to any person or property [this would include immediate family and the unborn] to retaliate against the public servant who is a judge or magistrate for any decision made or taken by the judge or magistrate in the discharge of their official duties. We also support House bill 89’s clarification that an “unlawful threat” is one that is direct or indirect/by proxy.
4. House Bill 89 incorporates into Section 2903.13 (C) (2) situations where the offense occurs in or on the grounds of a courthouse or on premises where a courtroom is located. We believe this will help address the related problem of courthouse violence.

## GENERAL RECOMMENDATIONS

We support the changes to the Ohio Revised Code that would punish those who threaten or assault a judge or magistrate because of their position as a judge or magistrate. We suggest the following considerations be made prior to adopting judicial assault legislation:

- Expand the covered class in R.C. 2903.01 to include judges and magistrates.
- Distinguish between a random act of violence where the victim just happens to be a judge and an intentional act of violence against a judge because s/he is a judge. Judges seek legislation that is narrowly drawn and that captures within its net only those offenders who knowingly commit assaults against a judge. We recommend that language like, “whom the offender knows or has reasonable cause to know is a law enforcement officer, judge, magistrate, or ...” We suggest that this clarification be added to the sections of the Ohio Revised Code dealing

with felonious assaults – Section 2903.11 (D)(1); aggravated assaults – Section 2903.12 (B); assaults – Section 2903.13 (C)(3),(4) and (5); and aggravated menacing – Section 2903.21 (B)

- Consolidate and clarify existing law rather than create a new threatening offense and section. Instead of creating a new and separate section 2903.23 for threatening a judge, consider revising and clarifying existing Section 2921 that deals with intimidation and retaliation.
  - Change the definition section (2921.01) to include judges and magistrates, their immediate family members, and their unborn. [There may not be a need to add family and unborn to the definition, if you use broad “any person or property” language as suggested below in the changes to Section 2921.05.]
  - Change the intimidation section (2921.03) to clarify that it is illegal to “knowingly and by force or by unlawful threat of harm to ... attempt to influence, intimidate, or hinder the public servant who is a judge or magistrate in the discharge of the[ir] ... official duties.” Also clarify that that “unlawful threat” is one that is direct or indirect/by proxy.
  - Change the retaliation section (2921.05) to eliminate “purposely” to clarify that it is illegal to “knowingly and by force” to make an unlawful threat of harm to any person or property [this would include immediate family and the unborn] to retaliate against the public servant who is a judge or magistrate for any decision made or taken by the judge or magistrate in the discharge of their official duties. Also clarify that an “unlawful threat” is one that is direct or indirect/by proxy.