The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL:	SB 252
INTRODUCER:	Senator Wilson
SUBJECT:	Noose/Public Display
DATE:	March 1, 2010
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.			JU	
3.				
4.				
5.				
6.				

I. Summary:

The bill provides that it is a first degree misdemeanor to place or cause a noose to be placed:

- In a public place in this state;
- On private property in this state without first obtaining the written permission of the property or occupier; or
- In any exhibit with the intention to intimidate another person, prevent another person from doing any lawful act, or causing another person to do an unlawful act.

The described act is only unlawful if the person placed or exhibited the noose with the intent to:

- Deprive another person or class of persons of the equal protection of, or equal privileges and immunities under, the laws of this state or for the purpose of preventing constituted authorities of this state or its subdivisions from, or hindering them in, giving or securing to all persons within this state the equal protection of the laws of this state;
- By force or threat of force, injure, intimidate, or interfere with another person because of the person's exercise of any right secured by federal, state, or local law or to intimidate another person or class of persons from exercising any right secured by federal, state, or local law; or
- Intimidate, threaten, abuse, or harass another person.

This bill creates section 876.211, of the Florida Statutes.

II. Present Situation:

The Noose and Historical Lynchings of African Americans
The noose has been perceived as a symbol of the historical lynchings of African Americans. One court has described this history and its impact on African Americans as follows:

> Those of us from whom a particular symbol is just that -a symbol- may have difficulty appreciating the very real, very significant fear that such symbols inspire in those to whom they are targeted. No less than the swastika or the Klansman's hood, the noose in this context is intended to arouse fear….
>
> Indeed, the noose is among the most repugnant of all racist symbols, because it is itself an instrument of violence. It is impossible to appreciate the impact of the display of a noose without understanding this nation's opprobrious legacy of violence against African-Americans. One study notes that from 1882, the earliest date for reliable statistics, to 1968, 3,446 African-Americans died at the hands of lynch mobs. *See* Robert L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950* 4 (1980). Obviously, these figures underestimate the actual number of blacks who were the victims of lynchings because such atrocities were underreported, and southern whites frequently attempted to suppress evidence of mob violence for fear of the enactment of a federal anti-lynching law. *See id.*
>
> The effect of such violence on the psyche of African-Americans cannot be exaggerated. Sociologists have explained that "lynching was employed to maintain dominance whenever it suited whites to reaffirm their mastery or blacks challenged or seemed about to test the established contours of their subordination." *Id.* at 9….
>
> The lynchings in this nation's past cannot be relegated to the history books. As one essayist noted: "That is [the] rite of colored male passage: having to drag all those lynchings around with them, around their necks: those are their ancestors." Hilton Als, *GWTW in Without Sanctuary: Lynching Photography in America* 38, 41 (2000) (examining Henry Dumas's short story, "Ark of Bones"). The hangman's noose remains a potent and threatening symbol for African-Americans, in part because the grim specter of racially motivated violence continues to manifest itself in present day hate crimes….[1]

Displaying a Noose is Not Specifically Proscribed
Displaying a noose in certain circumstances is not specifically proscribed. Depending upon the context and circumstances (including such displays in connection with other acts), it is conceivable that some noose displays could be punished as a nuisance,[2] disorderly conduct,[3] criminal mischief,[4] trespassing,[5] or exhibits to intimidate.[6] Further, depending upon the context

[1] *Williams v. New York City Housing Authority*, 154 F.Supp.2d 820, 824 (S.D.N.Y. 2001) (footnotes, citations, and text omitted).
[2] Section 823.01, F.S.
[3] Section 877.03, F.S.
[4] Section 806.13, F.S.
[5] Sections 810.08 and 810.09, F.S.
[6] Section 876.19, F.S.

and circumstances, it is conceivable that there could be a civil remedy available for some noose displays if those noose displays (including such displays in connection with other acts) were a violation of constitutional rights under the Florida Civil Rights Act,[7] tortious conduct (such as libel),[8] or a violation of legal rights of employees or employment practices.[9]

Florida's hate crimes statute, s. 775.085, F.S., reclassifies the felony or misdemeanor degree of an offense if the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability, or advanced age of the victim. The record must reflect that the defendant knew or perceived that the victim was within the delineated class. It is conceivable that evidence of displaying a noose could be offered in evidence of such animus.

There are a number of statutes that proscribe the wearing or display of certain items in certain circumstances. For example, s. 775.0845, F.S., reclassifies the felony or misdemeanor degree of an offense other than a violation of ss. 876.12-876.15, F.S., if, while committing the offense, the offender was wearing a hood, mask, or other device that concealed the offender's identity. Other statutes prohibit a person[10] from wearing any mask, hood, or device whereby any portion of the face is so hidden, concealed, or covered as to conceal the identity of the wearer when the person so concealed:

- Enters upon, or is upon or appears upon any lane, walk, alley, street, road, highway, or other public way in this state (s. 876.12, F.S.).
- Enters upon, is upon, or appears upon or within the public property of any municipality or county of the state (s. 876.13, F.S.).
- Demands entrance or admission or enters or comes upon or into the premises, enclosure, or house of any other person in any municipality or county of this state (s. 876.14, F.S.).
- Holds any manner of meeting or makes any demonstration upon the private property of another unless that person has first obtained from the owner or occupier of the property his or her written permission to do so (s. 875.15, F.S.).

Section 876.155, F.S., provides that offenses in ss. 876.12-876.15, F.S., apply only if the person was wearing a hood, etc.:

- With the intent to deprive any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws or for the purpose of preventing the constituted authorities of this state or any subdivision thereof from, or hindering them in, giving or securing to all persons within this state the equal protection of the laws;
- With the intent, by force or threat of force, to injure, intimidate, or interfere with any person because of the person's exercise of any right secured by federal, state, or local law or to intimidate such person or any other person or any class of persons from exercising any right secured by federal, state, or local law;

[7] Section 760.51, F.S.
[8] *See e.g., Stevens v. Horne*, 325 So.2d 459 (Fla. 4th DCA 1975).
[9] *See e.g.*, ss. 447.09 and 760.10, F.S.
[10] Sections 876.12, 876.14, and 876.15, F.S., apply to a person over 16 years of age; s. 876.13, F.S., does not contain an age limitation.

- With the intent to intimidate, threaten, abuse, or harass any other person; or
- While she or he was engaged in conduct that could reasonably lead to the institution of a civil or criminal proceeding against her or him, with the intent of avoiding identification in such a proceeding.

Section 876.16, F.S., provides the following exemptions from the provisions of ss. 876.12-876.15, F.S.:

- Any person or persons wearing traditional holiday costumes;
- Any person or persons engaged in trades and employment where a mask is worn for the purpose of ensuring the physical safety of the wearer, or because of the nature of the occupation, trade, or profession;
- Any person or persons using masks in theatrical productions, including use in Gasparilla celebrations and masquerade balls; or
- Persons wearing gas masks prescribed in emergency management drills and exercises.

Section 876.17, F.S., prohibits a person from placing or causing to be placed in a public place in the state a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is a whole or a part. Section 876.18, F.S., punishes the same conduct when it occurs on the property of another in the state without first obtaining written permission of the owner or occupier of the premises to do so.

Section 876.19, F.S., prohibits a person from placing, or causing to be placed, anywhere in the state any exhibit of any kind whatsoever with the intention of intimidating any person or persons, to prevent them from doing any act which is lawful, or to cause them to do any act which is unlawful.

Section 876.20, F.S., prohibits a person while wearing a mask or any device whereby the face is so covered as to conceal the identity of the wearer from placing, or causing to be placed, at, on, or in any place any exhibit of any kind whatsoever.

A violation of ss. 876.12-876.17, F.S., s. 876.19, F.S., and s. 876.20, F.S., is a second degree misdemeanor. A violation of s. 876.18, F.S., is a first degree misdemeanor.[11]

III. Effect of Proposed Changes:

The bill creates s. 876.211, F.S., which provides that it is a first degree misdemeanor[12] to place or cause a noose to be placed:

- In a public place in this state;
- On private property in this state without first obtaining the written permission of the property or occupier; or

[11] Sections 876.18 and 876.21, F.S.
[12] A first degree misdemeanor is punishable by up to a year in jail, a fine of up to $1,000, or both. ss. 775.082 and 775.083, F.S.

- In any exhibit with the intention to intimidate another person, prevent another person from doing any lawful act, or causing another person to do an unlawful act.

The described act is only unlawful if the person placed or exhibited the noose with the intent to:

- Deprive another person or class of persons of the equal protection of, or equal privileges and immunities under, the laws of this state or for the purpose of preventing constituted authorities of this state or its subdivisions from, or hindering them in, giving or securing to all persons within this state the equal protection of the laws of this state;
- By force or threat of force, injure, intimidate, or interfere with another person because of the person's exercise of any right secured by federal, state, or local law or to intimidate another person or class of persons from exercising any right secured by federal, state, or local law; or
- Intimidate, threaten, abuse, or harass another person.

The effective date of the bill is July 1, 2010.

Other Potential Implications:

The bill, in part, proscribes display of a noose with the "intent to intimidate, threaten, abuse, or harass another person." These words are undefined and prosecutors will need to be circumspect in the charging decision to avoid prosecutions of conduct protected by the First Amendment.[13] For example, hanging figures in effigy has long been a form of political dissent in this country. As early as 1765, Andrew Oliver, the Stamp Act Commissioner, was hung in effigy by colonialist protestors.[14] Political figures such as Abraham Lincoln, Theodore Roosevelt, Harry Truman, Richard Nixon, and Ronald Reagan were reportedly hung in effigy.[15] More recently, political figures such as George Bush, Sarah Palin, John McCain, and President Barack Obama were reportedly hung in effigy.[16] In regard to these types of noose display, it may be difficult in some circumstances to ascertain whether the perceived "intimidation" is, in fact, conduct protected by the First Amendment.

Noose displays have occurred in a number of different contexts that may or may not be protected conduct. For example, nooses have been displayed during labor strikes,[17] outside abortion clinics,[18] and in the workplace.[19] Nooses have also been displayed to express displeasure about

[13] It does not appear that the noose display statutes of other states that use terms like "intimidation" define those terms either.
[14] See the following link at Archiving Early America: http://www.earlyamerica.com/review/2009_winter_spring/revolution-in-massachusetts-2.html
[15] Julie Brink, "The Golden Yolk-A Place of Memories," *The Progress* (Clearfield Pennsylvania), March 22, 1980 (Lincoln); "Roosevelt is Hung in Effigy," *Logansport Journal*, (Logansport, Indiana), June 4, 1902 (Roosevelt); "Truman Hung in Effigy" (AP Wire photo), *The Journal-Standard* (Freeport, Illinois), July 19, 1948 (Truman); "Diverse Group Re-Enact the Boston Tea Party," *Daily News Record* (Harrisonburg, Virginia), December 17, 1973 (Nixon); "Academic Senate in Action," *Press-Telegram* (Long Beach, California), January 14, 1967 (Reagan). Articles acquired through Access Newspaper Archive.
[16] "Obama hanging effigy spotted in Plains, Ga.," *New York Amsterdam News*, January 7-13, 2010 (Palin, Bush, McCain, and Obama). Article acquired through Lexis-Nexis News.
[17] *Stevens v. Horne, supra.*
[18] *Meyer v. City of Cincinnati*, 943 F.2d 52 (6th Cir. 1991) (unpublished disposition).
[19] *Barrow v. Georgia Pacific Corp.*, 144 Fed.Appx. 54 (11th Cir. 2005) (not selected for publication in the Federal Reporter).

the performance of athletic coaches[20] and disapproval of athletic teams (such as the hanging of an opponent school's mascot at a pep rally),[21] to celebrate Halloween,[22] and to portray or depict in theater or film a true or fictitious event.[23] These are but a few examples.

While the noose has been perceived as a symbol of violence based on its historical display or use, other items such as the swastika[24] and the bullwhip[25] have also been perceived as symbols of violence based on their historical display or use. The display of these items in certain circumstance is not proscribed by the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

> The First Amendment, as applied to the states through the Fourteenth [A]mendment, with certain exceptions, generally prohibits the government from enacting laws that abridge the freedom of speech because of disapproval of its content. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 382, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). Ordinarily, the First Amendment denies a state "the power to prohibit dissemination of social, economic and political doctrine which a vast majority of its citizens believes to be false and fraught with evil consequence." *Virginia v. Black*, 538 U.S. 343, 123 S.Ct. 1536, 1547, 155 L.Ed.2d 535 (2003) (quoting *Whitney v. California*, 274 U.S. 357, 374, 47 S.Ct. 641, 71 L.Ed. 1095 (1927) (Brandeis, J., concurring)). Moreover, the First Amendment affords

[20] "Coach made the right call; Choosing West Virginia instead of returning home paved the way to Florida State," *Florida Times-Union*, December 31, 2009 (discussing the hanging in effigy of Bobby Bowden, former coach of West Virginia and Florida State). Article acquired through Lexis-Nexis News.
[21] Barry Lorge, "Navy Revives College Spirit For The Game; Mids Rally 'Round for The Game," *Washington Post*, November 22, 1977 (discussing the hanging of the Army's mule mascot). Article acquired through Lexis-Nexis News.
[22] Mark Hoffmann, "Allen's Dairy Farm in Smock may turn full-time to tourism, *Tribune-Review* (Greensburg, PA), October 25, 2009 (describing the mock "hanging of a girl" during a "haunted hayride" at a dairy farm). Article acquired through Lexis-Nexis News.
[23] Clifford Terry, "Saddle up for a rip roarin' TV 'Dove'," *Chicago Tribune*, February 3, 1989 (discussing fictional hangings in the TV series Lonesome Dove). Article acquired through Lexis-Nexis News.
[24] Michael Crook, "Teen Pleads Guilty to Nazi-Style Profanity," *Miami Herald*, April 21, 1992 (describing the community impact of graffiti written on a religious temple, which included the depiction of a swastika). Article acquired through Lexis-Nexis News.
[25] *See Johnson v. Potter*, 177 F.Supp.2d 961(D.Minn. 2001) (discussing the association of the bullwhip with racial violence).

protection to symbolic or expressive conduct as well as to actual speech. *Black*, 123 S.Ct. at 1547.[26]

Regulation of speech, conduct, or expression does not always run afoul of the First Amendment:

> The protections afforded by the First Amendment … are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the Constitution…. The First Amendment permits "restrictions upon the content of speech in a few limited areas, which are 'of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.'" *R.A.V. v. City of St. Paul, supra*, at 382-383, 112 S.Ct. 2538 (quoting *Chaplinsky v. New Hampshire* … [315 U.S. 568, 572, 62 S.Ct. 766, 766, 86 L.Ed. 1031(1942)]).
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> Thus, for example, a State may punish those words "which by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Chaplinsky v. New Hampshire, supra*, at 572, 62 S.Ct. 766…. We have consequently held that fighting words -"those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction"- are generally proscribable under the First Amendment. *Cohen v. California*, 403 U.S. 15, 20, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971)…. Furthermore, "the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (*per curiam*). And the First Amendment also permits a State to ban a "true threat." *Watts v. United States*, 394 U.S. 705, 708, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (*per curiam*) (internal quotation marks omitted)….
>
> "True threats" encompass those statements where 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. *See Watts v. United States, supra*, at 708, 89 S.Ct. 1399 ("political hyperbole" is not a true threat); *R.A.V. v. City of St. Paul*, 505 U.S., at 388, 112 S.Ct. 2538. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats "protect[s] individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting people "from the possibility that the threatened violence will occur." *Ibid.* Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death….[27]

[26] *Rodriguez v. State*, 906 So.2d 1082, 1088 (Fla. 3d DCA 2004), *affirmed*, 920 So.2d 624 (Fla.2005).
[27] *Virginia v. Black*, 538 U.S. at 358-360 (some citations and text omitted).

There does not appear to be any First Amendment case yet addressing a state's ban on displays of a noose in certain circumstances.[28] The case that will likely provide courts with guidance is *Virginia v. Black*. In that case, the United States Supreme Court held that a Virginia offense of burning a cross with intent to intimidate did not violate the First Amendment. However, a provision of the statute that provided that the burning of a cross was prima facie evidence of an intent to intimidate was held to be unconstitutional. In upholding the ban on cross burning, the Court opined that cross burning is "a particularly virulent form of intimidation," which Virginia could regulate "in light of cross burning's long and pernicious history as a signal of impending violence."[29] However, the Court was not indicating that all cross burnings would satisfy the "intent to intimidate" element or would be conduct that is proscribable without violating the First Amendment.

> As the history of cross burning indicates, a burning cross is not always intended to intimidate. Rather, sometimes the cross burning is a statement of ideology, a symbol of group solidarity. It is a ritual used at Klan gatherings, and it is used to represent the Klan itself. Thus, "[b]urning a cross at a political rally would almost certainly be protected expression." *R.A.V. v. St. Paul*, 505 U.S., at 402, n. 4, 112 S.Ct. 2538 (White, J., concurring in judgment) (*citing Brandenburg v. Ohio*, 395 U.S., at 445, 89 S.Ct. 1827)…. Indeed, occasionally a person who burns a cross does not intend to express either a statement of ideology or intimidation. Cross burnings have appeared in movies such as Mississippi Burning, and in plays such as the stage adaptation of Sir Walter Scott's The Lady of the Lake.[30]

The constitutional defect in the prima facie evidence provision was that it "ignore[d] all of the contextual factors that are necessary to decide whether a particular cross burning is intended to intimidate. The First Amendment does not permit such a shortcut."[31]

The Court found that its holding on the Virginia cross-burning ban was "fully consistent" with *R.A.V. v. City of St. Paul*.[32] In *R.A.V.*, the Court:

> held that a local ordinance that banned certain symbolic conduct, including cross burning, when done with the knowledge that such conduct would "'arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender'" was unconstitutional. *Id.*, at 380, 112 S.Ct. 2538 (quoting the St. Paul Bias-Motivated Crime Ordinance, St. Paul, Minn., Legis. Code § 292.02 (1990)). We held that the ordinance did not pass constitutional muster because it

[28] In dicta in one federal case involving employment discrimination and retaliation, the court commented: "In one recent oral argument before the Supreme Court concerning a cross burning by the Ku Klux Klan, Justice Thomas, the only African American sitting on the Court, angrily disputed counsel for the State of Virginia's claim that a burning cross was protected speech. The symbol, he said, was "unlike any symbol in our society." Oral Argument of *Virginia v. Black*, 2002 WL 31838589 at *23 (Thomas J.). "[T]here was no other purpose to [the Ku Klux Klan's cross-burning], no communication of a particular message.... It was intended to cause fear and to terrorize a population." *Id*. at *22-24 (Thomas J.). The Court believes that a hangman's noose should be viewed in the same vein." *Brown v. Peterson*, 2006 WL 349805, p. 9, n. 10 (N.D.Tex. 2006) (not reported in F.Supp.2d).

[29] *Virginia v. Black*, 538 U.S. at 363.

[30] *Virginia v. Black*, 538 U.S. at 365-366 (some citations omitted).

[31] *Virginia v. Black*, 538 U.S. at 367.

[32] *Virginia v. Black*, 538 U.S. at 363.

> discriminated on the basis of content by targeting only those individuals who "provoke violence" on a basis specified in the law. 505 U.S., at 391, 112 S.Ct. 2538. The ordinance did not cover "[t]hose who wish to use 'fighting words' in connection with other ideas-to express hostility, for example, on the basis of political affiliation, union membership, or homosexuality." *Ibid.* This content-based discrimination was unconstitutional because it allowed the city "to impose special prohibitions on those speakers who express views on disfavored subjects." *Ibid.*[33]

In contrast, the Virginia ban on cross burning did not "not single out for opprobrium only that speech directed toward 'one of the specified disfavored topics.' *Id*., at 391, 112 S.Ct. 2538. It does not matter whether an individual burns a cross with intent to intimidate because of the victim's race, gender, or religion, or because of the victim's 'political affiliation, union membership, or homosexuality.' *Ibid*."[34]

In *Robinson v. State*,[35] the Florida Supreme Court held that s. 876.13, F.S. (1997), which made it a criminal offense to wear a mask or hood that concealed identity, was unconstitutionally overbroad under the First Amendment because the statute was susceptible of being applied to entirely innocent activities. The holding in *Robinson* was well before the holdings in *R.A.V. v. City of St. Paul* and *Virginia v. Black.* Subsequent to the *Robinson* decision, the Legislature created s. 876.155, F.S., which limited the application of this statute and related statutes. Apparently, the Legislature was attempting to "cure" the problems identified in *Robinson*.[36] The Florida Supreme Court has never reviewed s. 876.13, F.S., and related statutes in light of s. 876.155, F.S.

One of the cross-burning statutes, s. 876.18, F.S. (1993), was upheld by the Florida Supreme Court against a facial challenge on First Amendment grounds in *State v. T.B.D.*[37] The holding in *T.B.D.* issued after the holding in *R.A.V. v. City of St. Paul* but well before the holding in *Virginia v. Black*. The Court found that the statute proscribed conduct that falls within the categories of "threats of violence" and "fighting words," categories the United States Supreme Court indicated could be regulated.[38] The Court also found that the statute comported with *R.A.V. v. City of St. Paul* because it was "an even-handed and neutral ban on a manifestly damaging form of expressive activity."[39] The Court also found that the statute was not overbroad in violation of the First Amendment. While acknowledging that "one might be able to imagine a hypothetical situation wherein the statute could be impermissibly applied," the Court found that "the threat of overbreadth is speculative at best and is insufficiently substantial to invalidate this statute on its face…."[40]

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[33] *Virginia v. Black*, 538 U.S. at 361.
[34] *Virginia v. Black*, 538 U.S. at 362.
[35] 393 So.2d 1076 (Fla.1980).
[36] *Nicol v. State*, 939 So.2d 231, 233, n. 2 (Fla. 5th DCA 2006).
[37] 656 So.2d 479 (Fla. 1995).
[38] 656 So.2d at 481.
[39] *Id.*
[40] 656 So.2d at 481 (text and citation omitted).

The holding in *State v. T.B.D.* was that the statute was constitutional on its face on First Amendment grounds. While not directly addressing whether the statute might be unconstitutionally applied in particular cases to conduct protected by the First Amendment, it appears the Court was not precluding this possibility. It is notable the statute does not include an "intent to intimidate" element like the Virginia statute reviewed in *Virginia v. Black*, and the Florida Supreme Court has not addressed a case challenging this statute on First Amendment grounds since the holding in *Virginia v. Black*.

The bill does not contain the type of prima facie evidence provision found constitutionally objectionable in *Virginia v. Black*. Like the Virginia statute reviewed in that case (and unlike the cross burning statute reviewed in *T.B.D v. State*), the bill proscribes the display of a noose with an intent to intimidate, though it does reach farther than the Virginia statute, e.g., proscribing the display of a noose with the intent to deprive another person or class of the equal protection of the laws of this state. Were the bill to become law and later be determined by a Florida court to be facially constitutional under the First Amendment, this would not preclude challenges to application of the law. Those challenges, if any, might provide additional guidance on what conduct can or cannot be proscribed.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) provides the final, official estimate of the prison bed impact, if any, of legislation. CJIC has not yet met to consider the bill. However, the bill provides that the new noose display offense is a first degree misdemeanor, which is not punishable by a state prison sentence. Jail bed impact, if any, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

California, Connecticut, Louisiana, New York, North Carolina, and Virginia have enacted laws to proscribe displays of a noose in certain circumstances.[41]

[41] See § 11411, California Penal Code; § 46a-58, Connecticut General Statutes; § 14:40.5, Louisiana Revised Statutes; § 240.31, Laws of New York; § 14-12.13 and 14-12.14, North Carolina General Statutes; § 18.2-423.2, Code of Virginia.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.