

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: CS/SB 860

INTRODUCER: Criminal Justice Committee and Senator Oelrich

SUBJECT: Threats

DATE: April 7, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/CS
2.			JA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill amends a current second degree felony offense involving written threats to kill or do bodily injury to apply this offense to the same type of threats when they involve electronic communications.

This bill substantially amends section 836.10 of the Florida Statutes.

II. Present Situation:

Section 836.10, F.S., provides that it is a second degree felony for a person to write or compose and also send or procure the sending of any letter or inscribed communication, so written or composed, whether such letter or communication be signed or anonymous, to any person, containing a threat to kill or do bodily injury to the person to whom such letter or communication is sent, or a threat to kill or do bodily injury to any family member of the person to whom the letter or communication is sent. The statute does not specifically include such threats when they involve electronic communications.

Section 836.10, F.S., has been held by courts not to be void for vagueness or infringe on the First Amendment or the Eighth Amendment.¹ There do not appear to be any cases indicating unconstitutional application of the statute.²

III. Effect of Proposed Changes:

The bill amends a current second degree felony³ offense in s. 836.10, F.S., which involves written threats to kill or do bodily injury, to apply this offense to the same type of threats when they involve electronic communications.

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

Other Potential Implications:

A study comparing e-mail threats and letter threats toward members of Congress found differences between the e-mail writers and the letter writers studied, including the following:

- E-mail writers tended to be younger than letter writers. The average age of e-mail writers was 27.80 years, while the average age of letter writers was 45.99 years.
- Significantly more letter writers than e-mail writers identified or contacted more than one target.
- Letter writers were significantly more likely than e-mail writers “to use multiple methods of contact in addition to their written correspondence (e.g., telephone calls)[.]”
- E-mail writers were significantly more likely than letter writers “to display disorganization or incoherence” and to use obscenities in their writing.
- Letter writers were more likely than e-mail writers “to make a problematic physical approach toward their target[.]”
- Letter writers were significantly more likely than e-mail writers to “exhibit indicators” of serious mental illness.
- Letter writers had “significantly more total past criminal charges” than e-mail writers.⁴

¹ *Saidi v. State*, 845 So.2d 1022 (Fla. 5th DCA 2003); *Smith v. State*, 532 So.2d 50 (Fla. 2d DCA 1988); and *Reilly v. State, Dept. of Corrections*, 847 F.Supp. 951(M.D.Fla. 1994).

² For example, in *Smith v. State, supra*, at p. 53, the court stated: “[C]ourts must exercise caution in distinguishing true threats from crude hyperbole—a judgment derived from examining the totality of the circumstances. *Watts [v. United States]*, 394 U.S. 705 (1969)], arose in the setting of an anti-war rally at which the defendant expressed a desire to shoot the President, under circumstances where the utterance could only be interpreted as satirical. In *Matthews v. State*, 363 So.2d 1066 (Fla.1978), which the court found distinguishable from *Watts*, the setting was a protest gathering at which fear of imminent harm to public officials was ‘consciously embraced.’ In a society where the expression of opinion is given the fullest protection, public figures must expect criticism that may be untrue, unjustified, or hurtful. They need not, however, passively accept statements or conduct transcending mere criticism which threaten[s] personal or family safety. *Smith*, with his ‘poisoned’ pen, crossed that threshold and he may not now claim constitutional insulation for his actions.”

³ A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both imprisonment and a fine.

⁴ Katherine A. Schoeneman-Morris, Mario J. Scalora, Grace H. Chang, William J. Zimmerman, and Yancey Garner. “A Comparison of Email Versus Letter Threat Contacts toward Members of the United State Congress.” *Journal of Forensic Science*, September 2007, Vol. 52, No. 5, 1141-1147 (information at pp. 1145-1147).

The authors of the study also note that their findings appear to be consistent with the “conceptualization of letter writing as a more deliberate act,” in contrast to e-mails, which tend “to be a more impulsive and quickly executed act[.]”⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation determined that the original bill, which contains the same provision as CS/SB 860, will have an indeterminate prison bed impact. Jail bed impact, if any, is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁵ Schoeneman-Morris et al (2007) at pp. 1146-1147.

VIII. Additional Information:

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

CS by Criminal Justice on April 7, 2010:

Only amends a current second degree felony offense involving written threats to kill or do bodily injury to apply this offense to the same type of threats when they involve electronic communications.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
