

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 257	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Smith and others	116 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 436	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 257 passed the House on March 8, 2016, as CS/CS/SB 436.

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. However, such a threat or report must fall into narrow categories to be criminal. There are a number of states throughout the nation that criminalize broad categories of serious threats of great bodily harm or death. Florida currently does not have such a prohibition in place.

The bill expands the current second degree felony offenses of making a false report about planting a bomb, explosive, or weapon of mass destruction under s. 790.163, F.S., and under s. 790.164, F.S., relating to property owned by the state or any political subdivision, to also make it a second degree felony to make a false report concerning the use of firearms in a violent manner against a person.

Additionally, the bill creates s. 836.12, F.S., to make it a first degree misdemeanor to threaten death or serious bodily harm against a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member of such a person. A second or subsequent offense is a third degree felony.

The Criminal Justice Impact Conference met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department of Corrections (i.e., an increase of ten or fewer beds). The bill may also have a positive jail bed impact for local governments because it creates a new first degree misdemeanor offense.

The bill was approved by the Governor on March 30, 2016, ch. 2016-156, L.O.F., and will become effective on October 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Florida law currently imposes criminal penalties for making specific types of threats, as well as false reports regarding explosives or other destructive devices. Such a threat or report must fall into one of several narrow categories to constitute a crime, with varying penalties depending on the type of threat or report that is made.

There are a number of states throughout the nation that criminalize threats of violence against others. Many of these states criminalize threats of violence when made with the intent to cause some type of harm, such as terror, an evacuation, or other serious public inconvenience.¹ Florida currently does not have such a prohibition in place.

Written Threat to Kill

It is currently a second degree felony² to write or compose and send, or procure the sending of, any written or electronic communication containing a threat to kill or do bodily injury to the person to whom the letter or communication is sent, or a threat to kill or do bodily injury to the family of the person to whom such letter or communication is sent.³

This prohibition does not apply to unwritten threats, such as a threat made over the telephone, nor does it apply to written threats against a third party who is not the person, or the family of the person, to whom the letter was sent.

Threat Regarding a Destructive Device

It is currently a second degree felony for any person to threaten to throw, project, place, or discharge any destructive device⁴ with intent to do bodily harm to any person or with intent to do damage to any property of any person.⁵ A conviction under this statute does not require proof that the accused actually intended to follow through with the threat, only that the threat conveyed the intent to do bodily harm to another.⁶

This prohibition applies to both written and unwritten threats, but it does not apply to threats to do violence to a person without the use of a destructive device.

Threat against a Public Servant

¹ See, e.g., ALA. CODE §13A-10-15; GA. CODE ANN. §16-11-37; N.J. STAT. ANN. §2C:12-3; WYO. STAT. ANN. §6-2-505;

² A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082 and 775.083, F.S.

³ s. 836.10, F.S.

⁴ Section 790.001(4), F.S., defines “destructive device” as any bomb, grenade, mine, rocket, missile, pipebomb, or similar device containing an explosive, incendiary, or poison gas and includes any frangible container filled with an explosive, incendiary, explosive gas, or expanding gas, which is designed or so constructed as to explode by such filler and is capable of causing bodily harm or property damage; any combination of parts either designed or intended for use in converting any device into a destructive device and from which a destructive device may be readily assembled; any device declared a destructive device by the Bureau of Alcohol, Tobacco, and Firearms; any type of weapon which will, is designed to, or may readily be converted to expel a projectile by the action of any explosive and which has a barrel with a bore of one-half inch or more in diameter; and ammunition for such destructive devices, but not including shotgun shells or any other ammunition designed for use in a firearm other than a destructive device. “Destructive device” does not include: (1) A device which is not designed, redesigned, used, or intended for use as a weapon; (2) Any device, although originally designed as a weapon, which is redesigned so that it may be used solely as a signaling, line-throwing, safety, or similar device; (3) Any shotgun other than a short-barreled shotgun; or (4) Any nonautomatic rifle (other than a short-barreled rifle) generally recognized or particularly suitable for use for the hunting of big game.

⁵ s. 790.162, F.S.

⁶ *Reid v. State*, 405 So. 2d 500 (Fla. 2d DCA 1981).

It is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant in violation of a public duty, or in performance of a public duty.⁷

It is a second degree felony to unlawfully harm any public servant or any other person with whose welfare the public servant is interested.⁸ It is a third degree felony⁹ to threaten unlawful harm to any public servant or to any other person with whose welfare the public servant is interested.¹⁰

This prohibition criminalizes both written and unwritten threats; however, it only applies to a threat that is made with the intent to influence or coerce a public servant. This prohibition is also limited to criminalizing threats made against public servants, their families, and other people with whose welfare the public servant is interested, and does not criminalize threats against other members of the public.

False Reports

It is a second degree felony for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction.^{11, 12}

Likewise, with respect to property owned by the state or any political subdivision,¹³ it is a second degree felony for any person to make a false report, with intent to deceive, mislead, or otherwise misinform any person concerning:

- the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction; or
- any act of arson or other violence to such property.¹⁴

A person who is convicted of committing one of the offenses above may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct if the offense resulted in the mobilization or action of any law enforcement officer or any state or local agency.¹⁵

Effect of the Bill

The bill expands the current crimes of making a false report about planting a bomb, explosive, or weapon of mass destruction under s. 790.163, F.S., and under s. 790.164, F.S., relating to property owned by the state or any political subdivision, to also make it a second degree felony to make a false report, with intent to mislead, deceive, or otherwise misinform any person concerning the use of firearms in a violent manner against a person.

⁷ s. 838.021, F.S.

⁸ s. 838.021(3)(a), F.S.

⁹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. ss. 775.082 and 775.083, F.S.

¹⁰ s. 838.021(3)(b), F.S.

¹¹ “Weapon of mass destruction” is defined as: (1) any device or object that is designed or intended to cause death or serious bodily injury to any human or animal, or severe emotional or mental harm to any human, through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors; (2) any device or object involving a biological agent; (3) any device or object that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life; or (4) any biological agent, toxin, vector, or delivery system. s. 790.166(a), F.S.

¹² s. 790.163(1), F.S.

¹³ “Political subdivision” is defined as including counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state. s. 1.01(8), F.S.

¹⁴ s. 790.164(1), F.S.

¹⁵ ss. 790.163(4) and 790.164(4)(d), F.S.

The bill creates a first degree misdemeanor¹⁶ to threaten death or serious bodily harm against a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member of such persons. A person who commits a second or subsequent offense commits a felony of the third degree.

The bill provides the following definitions:

- "Family member" means an individual related to another individual by blood or marriage, or an individual who stands in loco parentis to another individual.
- "Law enforcement officer" means a law enforcement officer as defined in s. 943.10, F.S., or a federal law enforcement officer as defined in s. 901.1505.

The bill makes conforming changes to the Offense Severity Ranking Chart, and reenacts ss. 1006.07 and 1006.13, F.S., to reflect the changes made by the bill to ss. 790.163 and 790.164, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

The Criminal Justice Impact Conference (CJIC) met on October 28, 2015, and determined that this bill will have a positive insignificant prison bed impact on the Department (i.e., an increase of ten or fewer beds).

According to the CJIC, there are currently several statutes with similar penalties. For example, s. 836.10, F.S. contains a second degree felony for written threats to kill or do bodily harm. In Fiscal Year 2014-2015, 51 offenders were sentenced for this offense and 13 received a prison sentence (mean sentence length was 50.4 months). Also, s. 790.162, F.S., makes it a second degree felony for threatening to throw, project, place, or discharge any destructive device. In Fiscal Year 2014-2015, 14 offenders were sentenced for this offense and one received a prison sentence (mean sentence length was 14.0 months).

Additionally, s. 790.163, F.S., contains a second degree felony for a false report about planting a bomb, explosive, or weapon of mass destruction, and s. 790.164, F.S., contains a second degree felony for a false report against state-owned property. In Fiscal Year 2014-2015, 24 offenders were sentenced for a false report about planting an explosive and four received a prison sentence (mean sentence length was 27.0 months). One offender was sentenced, but did not receive a prison sentence, for a false report against state-owned property.

In Fiscal Year 2014-2015, the incarceration rate for an unranked, 3rd degree felony was 9.9 percent and for an unranked, second degree felony was 26.7 percent.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

¹⁶ A first degree misdemeanor is punishable by up to a year in jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

The bill does not appear to have an impact on local government expenditures.

2. Expenditures:

The bill creates a new first degree misdemeanor offense; thus, the bill may have an impact on local government expenditures by increasing the need for jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.