

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 260

INTRODUCER: Senator Steube

SUBJECT: Threats to Kill or Do Bodily Injury

DATE: March 24, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	<b>Pre-meeting</b>
2.			ACJ	
3.			AP	
4.			RC	

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**I. Summary:**

SB 260 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill amends the statute to prohibit a person from making a threat in writing or other record, including an electronic record, to kill or injure another, and posting or transmitting the threat in any manner.

This bill makes s. 836.10, F.S., applicable under circumstances where a person transmits a threat to kill or do bodily injury to another in a more public forum than the current law contemplates.

**II. Present Situation:**

When s. 836.10, F.S., was enacted in 1913, social media was limited to the “pen and paper” written word, the newspaper, and possibly the radio.

Having been amended in 2010<sup>1</sup> to add “electronic communication,” s. 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
  - A letter,
  - Inscribed communication, or
  - Electronic communication,
- Containing a threat to kill or do bodily injury to:

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<sup>1</sup> Chapter 2010-51, Laws of Florida.

- The person to whom the letter or communication was sent, or
- Any member of the person's family.<sup>2</sup>

The act of "sending" under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.<sup>3</sup>

When the target of the threat is not necessarily a particular individual, but more random in nature, it is then that the application of the statute breaks down, particularly as related to social media.

### **Social Media**

Studies indicate that social media sites and other apps are widely used to communicate with other people and to find information. For example, recent publications by the Pew Research Center report that:

- 86 percent of Americans use the internet;<sup>4</sup>
- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;<sup>5</sup> and
- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites and 71 percent used 2 or more of the sites.<sup>6</sup>

### **Examples of Random School Threats Using E-Mail**

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.<sup>7</sup> The New York and Los Angeles threats were nearly identically worded, threatening the use of bombs, nerve gas, and rifles, and routed through a server in Frankfurt, Germany, apparently by the same person.<sup>8</sup> A few days later, similar threats were directed at schools in Florida.<sup>9</sup> Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools in one recent study covering half the 2013-14 school year in 43 states.<sup>10</sup>

<sup>2</sup> A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

<sup>3</sup> *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2nd DCA 1995).

<sup>4</sup> Pew Research Center, November 2016, "Social Media Update," pages 1-2.

<sup>5</sup> Pew Research Center, November 2016, "Social Media Update," pages 1-2.

<sup>6</sup> Pew Research Center, April 2015, "Teen, Social Media and Technology Overview 2015," pages 7 and 25.

<sup>7</sup> "Los Angeles and New York Differ in Their Responses to a Terrorism Threat," *The New York Times*, December 15, 2015, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited March 13, 2017).

<sup>8</sup> *Id.*

<sup>9</sup> "Miami-Dade, Broward Schools Receive Threats: Officials," Krista Deans, NBC News 6, December 17, 2015, <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited March 20, 2016). See also, "Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say," Crystal Moyer, WJXT News 4 Jacksonville, December 9, 2015, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited March 20, 2016).

<sup>10</sup> "Schools face new wave of violent threats sent by social media and other electronic means," National School Safety and Security Services, February 25, 2014, (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts

### Case Law Applying Current Statute

In a 2016 court decision, a juvenile's disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter<sup>11</sup> was reversed.<sup>12</sup> The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.<sup>13</sup> The tweets were discovered by an out-of-state watchdog group who reported the threats to local police. Local police later contacted the juvenile's school officials informing them of the threats.

The Second District Court of Appeals found that because the juvenile publicly posted the tweets, rather than directly sending them to any student or school official, the receipt of the threats by school officials through local police was too far removed to support a conviction under s. 836.10, F.S.

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.<sup>14</sup>

### III. Effect of Proposed Changes:

The bill amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill prohibits more modern communication circumstances in the context of threats to kill or do bodily injury to another than the statute as currently written.

The bill amends the statute to prohibit a person from making a threat in writing or other record, including an electronic record, to kill or injure another, and posting or transmitting the threat in any manner.

The current second degree felony penalties remain in the statute.

The bill is effective July 1, 2017.

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of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 13, 2017).

<sup>11</sup> "Twitter allows users to send 'updates' (or 'tweets': text based posts, up to 140 characters long) to [the] Twitter website via short message service (e.g. on a cell phone), instant messaging, from their computer at home or work, or through a third-party application." GNOTED, "What Is Twitter and How Does It Work- Beginner's Guide," February 9, 2009, available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited March 13, 2017).

<sup>12</sup> *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

<sup>13</sup> The following tweets were posted: "can't WAIT to shoot up my school," "it's time," "My mom and dad think I'm serious about shooting up my school I'm dying"; "school getting shot up on a Tuesday," "night f[\*\*\*]king sucked can't wait to shoot up my school soon"; and "I sincerely apologize to anyone who took me seriously. I love my high school and honestly own no weapons to want to harm anyone in any way." *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

<sup>14</sup> *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

**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 Judicial Administrative Commission submitted a “no impact” memorandum dated January 11, 2017, indicating that there is no expected fiscal impact to the agency related to this bill.<sup>15</sup>

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional costs to the Department of Corrections resulting from this bill, the costs are unquantifiable (unquantifiable increase in prison beds).

**VI. Technical Deficiencies:**

Typically when the Legislature substantially amends a criminal law, the effective date of the bill is October 1, 2017. This effective date allows additional time for new jury instructions to be created and issued by the Florida Supreme Court. It is suggested that the effective date in Section 2 of the bill be changed to October 1, 2017.

**VII. Related Issues:**

None.

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<sup>15</sup> Memorandum No. 002-17, Exec., Justice Administrative Commission.

**VIII. Statutes Affected:**

This bill substantially amends section 836.10 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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