

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 575 Threats to Kill or Do Bodily Injury  
**SPONSOR(S):** Judiciary Committee, Criminal Justice Subcommittee, Daniels and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Hall	White
2) Justice Appropriations Subcommittee	10 Y, 0 N	Smith	Gusky
3) Judiciary Committee	15 Y, 0 N, As CS	Hall	Camechis

### SUMMARY ANALYSIS

As the use of social media grows, the potential for such forms of communication to be used to make threats of violence also increases. In a recent study concerning online harassment, 25 percent of Internet users surveyed reported having seen someone physically threatened online, while eight percent reported having experienced being physically threatened online themselves. Additionally, a separate study found that approximately one-third of threats made to schools were delivered through social media and other forms of electronic communication.

Currently, s. 836.10, F.S., makes it a second degree felony to create and send certain written threats, including electronic communications, to kill or do bodily harm. To violate this section, a person must:

- Write or compose a threat to kill or do bodily injury; and
- Send, or procure the sending of, that communication to the person threatened or family member of the person threatened.

Recently, the Second District Court of Appeal issued an opinion highlighting the difficulty of applying s. 836.10, F.S., to threats issued and shared publicly on social media, as such threats may not be communicated directly to any specific person. In this case, a juvenile's conviction for violating s. 836.10, F.S., was overturned, although the juvenile had posted multiple threats of school violence on Twitter, because the threats were not directly sent to or received by any of the threatened students or school officials.

The bill amends s. 836.10, F.S., to prohibit a person from making a threat to kill or do bodily injury to another person in a writing or other record, including an electronic record, by sending, posting, or transmitting, or procuring the sending, posting, or transmission of, the threat in a manner that would allow another person to view the threat.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Thus, under the bill, a written threat to kill or do bodily injury to another person which is sent, posted, or transmitted in a manner that would allow another person to view the threat, even if not specifically sent to or received by the person who is the target of the threat, will be prohibited.

The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount.

The bill provides an effective date of October 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

According to a recent study, approximately 89 percent of American adults are now Internet users.<sup>1</sup> In a survey focusing on online harassment, 25 percent of adults surveyed had seen someone being physically threatened online, while eight percent had experienced being personally physically threatened online.<sup>2</sup> In a separate study regarding violent threats to schools,<sup>3</sup> researchers found 35 percent of threats made to schools were delivered by social media and other electronic forms of communication.<sup>4</sup>

In 2010, the Legislature amended s. 836.10, F.S., to add “electronic communication” to the types of written threats that are prohibited, but left intact the requirement that the written threat be sent to the person who is the subject of the threat or to a person whose family member is the subject of the threat. Section 836.10, F.S., currently makes it a second degree felony<sup>5</sup> for a person to write or compose and send or procure the sending of any letter, inscribed communication, or electronic communication which contains a threat to kill or do bodily injury to the person threatened or family member of the person threatened.

Criminal defendants have challenged the statute alleging it is vague and overbroad. They have argued that the statute could criminalize innocent written speech because it does not require proof that the defendant had the specific intent to cause the harm threatened.<sup>6</sup> Florida courts have held that s. 836.10, F.S., does not require the actual intent to do harm or the apparent ability to carry out the threat.<sup>7</sup> Additionally, the courts have upheld the statute finding it is definite enough to give notice of the behavior it proscribes and, thus, not vague. Further, it is limited enough in its objective to target threats to injure persons,<sup>8</sup> and, thus, not overbroad.<sup>9</sup>

In a 2016 decision, a juvenile’s disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter<sup>10</sup> was reversed.<sup>11</sup> The juvenile made a series of public posts on Twitter over the span of several days threatening to “shoot up” his school.<sup>12</sup> The tweets were discovered by an out-of-

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<sup>1</sup> PEW RESEARCH CENTER, *Online Harassment*, (October 2014) at 2, available at <http://www.pewinternet.org/2014/10/22/online-harassment> (last visited April 14, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> The study was conducted by National School Safety and Security Services. It reviewed 315 documented school bomb threats, shooting threats, hoaxes and acts of violence in 43 states during the first six months of the school year from August 2013 through January 2014. Ken Trump, *Schools face new wave of violent threats sent by social media and other electronic means, study says*, <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited April 14, 2017).

<sup>4</sup> Such other forms of electronic communication included email and text messages. *Id.*

<sup>5</sup> 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.

<sup>6</sup> *Saidi v. State*, 845 So. 2d 1022, 1026 (Fla. 5th DCA 2003).

<sup>7</sup> *Id.* at 1027.

<sup>8</sup> The First Amendment permits a state to ban a “true threat.” “‘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.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

<sup>9</sup> *Reilly v. Department of Corrections*, 847 F. Supp. 951, 958 (M.D. Fla. 1994). See also *Smith v. State*, 532 So. 2d 50, 52 (Fla. 2d DCA 1988).

<sup>10</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*, <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited April 14, 2017).

<sup>11</sup> *J.A.W. v. State*, 2016 Fla. App. LEXIS 14467 (Fla. 2d DCA 2016).

<sup>12</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

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 Appeal 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 highlighted the difficulty of applying the current statute to modern forms of social media communication, recognizing that many threats made on social media fall outside the narrow scope of the law which requires the communication to be sent directly to a specific person.<sup>13</sup>

### **Effect of the Bill**

The bill amends s. 836.10, F.S., to prohibit a person from making a threat to kill or to do bodily injury to another person in a writing or other record, including an electronic record, by sending, posting, or transmitting, or procuring the sending, posting, or transmission of, the threat in a manner that would allow another person to view the threat.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Thus, under the bill, a written threat to kill or do bodily injury to another person which is sent, posted, or transmitted in a manner that would allow another person to view the threat, even if not specifically sent to or received by the person who is the target of the threat, will be prohibited.

The bill reenacts ss. 794.056(1), 938.085, and 921.0022(3)(f), F.S., relating to the Rape Crisis Trust Fund and Criminal Punishment Code offense severity ranking chart, respectively, to incorporate amendments made to s. 836.10, F.S.

The bill provides an effective date of October 1, 2017.

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 836.10, F.S., relating to written threats to kill or do bodily injury.

Section 2: Reenacts s. 794.056(1), F.S., relating to the Rape Crisis Trust Fund.

Section 3: Reenacts s. 921.0022(3)(f), F.S., relating to the Criminal Punishment Code offense severity ranking chart.

Section 4: Reenacts s. 938.085, F.S., relating to the Rape Crisis Trust Fund.

Section 5: Provides an effective date of October 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The bill does not appear to have any impact on state revenues.
2. Expenditures: The Criminal Justice Impact Conference (CJIC) considered this bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount.

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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." *Id.*

<sup>13</sup> *Id.*

According to the CJIC, "Per DOC, in FY 15-16, there were 66 offenders sentenced for written threats to kill or do bodily injury, and 26 of these offenders were sentenced to prison (mean sentence length=47.0 m.). It is not known how many additional offenders would fall under the more expanded definition."<sup>14</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: The bill does not appear to have any impact on local government revenues.
2. Expenditures: The bill does not appear to have any impact on local government expenditures.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS: None.**

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.
2. Other: None.

**B. RULE-MAKING AUTHORITY: This bill does not appear to create the need for rulemaking or rulemaking authority.**

**C. DRAFTING ISSUES OR OTHER COMMENTS: None.**

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 8, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the bill prohibited a written threat to kill or do bodily harm that was transmitted in any manner, which may have potentially punished the transmission of a threat between the personal devices of one individual, even when there was no potential for another person to view the threat. The CS narrows the prohibited conduct to prohibit a person from posting or transmitting, or procuring the posting or transmission of a written threat to kill or do bodily injury, to either the person threatened, or in a manner that would allow another person to view the threat.

On April 20, 2017, the Judiciary Committee adopted a proposed committee substitute and reported the bill favorably as a CS. The CS differs from the bill as filed in that the CS:

- Makes technical drafting changes to conform certain language to language used in the Senate companion bill; and
- Removes a cross reference to s. 668.50, F.S., which provides a definition for an "electronic record."

This analysis is drafted to the CS as passed by the Judiciary Committee.

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<sup>14</sup> Email from Matthew Hasbrouck, Office of Economic & Demographic Research (March 1, 2017) (on file with the Criminal Justice Subcommittee).