

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 67 Protection of Specified Personnel
SPONSOR(S): Criminal Justice Subcommittee, Gottlieb and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee	15 Y, 0 N	Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, under s. 836.12, F.S., any person who threatens a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member of any such person, with death or serious bodily harm commits a first-degree misdemeanor; a second or subsequent offense is a third-degree felony.

Section 838.021, F.S., provides that 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.

It is a second-degree felony if the offender unlawfully harms such a public servant or any person with whose welfare the public servant is interested and a third-degree felony if the offender threatens to unlawfully harm such a person.

Additionally, s. 784.04, F.S., provides that any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits a first-degree misdemeanor. The severity of the offense is increased to a third-degree felony if the offender also makes a credible threat to the person. However, a single harassing telephone call made to a public office is not currently prohibited under Florida law.

CS/HB 67 amends s. 836.12, F.S., to:

- Include justices, judicial assistants, and family members of justices and judicial assistants, to the list of persons protected from threats of serious bodily harm or death under s. 836.12(2), F.S.;
- Require a violation of s. 836.12(2), F.S., to be committed “knowingly and willfully”; and
- Create a new first-degree misdemeanor offense in s. 836.12(3), F.S., to prohibit a person from knowingly and willfully harassing a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, a justice, a judicial assistant, or an elected official, with the intent to intimidate or coerce such a person to perform or refrain from performing a lawful duty.

The bill defines a “judicial assistant” as a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, and clerical support to the assigned judge or justice.

The Criminal Justice Impact Conference reviewed the bill on March 27, 2023 and determined provisions in the bill may have a positive insignificant impact on jail beds by expanding the scope of personnel protected from specified threats and by creating a new misdemeanor offense for harassing specified personnel with specified intent.

The bill provides an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Threats Against Specified Personnel

Under s. 836.12, F.S., any person who threatens a law enforcement officer,¹ a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member² of any such person, with death or serious bodily harm commits a first-degree misdemeanor.³

A person who commits a second or subsequent violation of s. 836.12, F.S., commits a third-degree felony.⁴

Threats Against a Public Servant

Under s. 838.021, F.S., 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.⁵

It is a second-degree felony⁶ if the offender unlawfully harms such a public servant or any person with whose welfare the public servant is interested and a third-degree felony if the offender threatens to unlawfully harm such a person.⁷

Written or Electronic Threats to Kill

Section 836.10, F.S., prohibits, as a second-degree felony, the sending, posting, or transmitting, or procuring the sending, posting, or transmission of, a writing or other record, including an electronic record,⁸ in any manner in which it may be viewed by another person, if the writing or record contains a threat to kill or do bodily injury to another person or to conduct a mass shooting or an act of terrorism.⁹

Obscene or Harassing Telephone Calls

¹ "Law enforcement officer" means: 1) A law enforcement officer as defined in s. 943.10, F.S.; or 2) a federal law enforcement officer as defined in s. 901.1505, F.S. S. 836.12(1)(b), F.S.

² "Family member" means: 1) an individual related to another individual by blood or marriage; or 2) an individual who stands in loco parentis to another individual. S. 836.12(1)(a), F.S.

³ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

⁴ S. 836.12(3), F.S.; A third-degree felony is punishable by a term of imprisonment not exceeding five years and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

⁵ S. 838.021(1), F.S.

⁶ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁷ S. 838.021(3)(a-b), F.S.

⁸ "Electronic record" means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call. S. 836.10(1), F.S.

⁹ S. 836.10(2), F.S.

Under s. 365.16, F.S., it is a second-degree misdemeanor¹⁰ to:

- Make a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy, and during such call make any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent, and by such call or such language intend to offend, annoy, abuse, threaten, or harass any person at the called number.
- Make a telephone call, whether or not conversation ensues, without disclosing your identity and with intent to annoy, abuse, threaten, or harass any person at the called number.
- Make or cause the telephone of another to repeatedly or continuously ring, with intent to harass any person at the called number.
- Make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.¹¹

Telephone calls made in good faith in the ordinary course of business or commerce are exempt from these provisions.¹²

Stalking

Under s. 784.048, F.S., it is a first-degree misdemeanor to willfully, maliciously, and repeatedly follow, harass, or cyberstalk another person.¹³ The severity of the offense is increased to a third-degree felony if the offender also makes a credible threat to the person.¹⁴

“Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.¹⁵

“Cyberstalk” means:

- To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person; or
- To access, or attempt to access, the online accounts or Internet-connected home electronic systems of another person without that person’s permission.¹⁶

Effect of Proposed Changes

CS/HB 67 amends s. 836.12, F.S., to:

- Include justices, judicial assistants, and family members of justices and judicial assistants, to the list of persons protected from threats of serious bodily harm or death under s. 836.12(2), F.S.;
- Require a violation of s. 836.12(2), F.S., to be committed “knowingly and willfully”; and
- Create a new first-degree misdemeanor offense in s. 836.12(3), F.S., to prohibit a person from knowingly and willfully harassing a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, a justice, a judicial assistant, or an elected official, with the intent to intimidate or coerce such a person to perform or refrain from performing a lawful duty.

The bill defines a “judicial assistant” as a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, and clerical support to the assigned judge or justice.

The bill provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

¹⁰ A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.

¹¹ S. 365.16(1), F.S.

¹² S. 365.16(5), F.S.

¹³ S. 784.04(2), F.S.

¹⁴ S. 784.04(3), F.S.

¹⁵ S. 784.04(1)(a), F.S.

¹⁶ S. 784.04(1)(d), F.S.

Section 1: Amends s. 836.12, F.S., relating to threats or harassment.

Section 2: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference reviewed the bill on March 27, 2023 and determined provisions in the bill may have a positive insignificant impact on jail beds by expanding the scope of personnel protected from specified threats and by creating a new misdemeanor offense for harassing specified personnel with specified intent. Per the Department of Corrections, there have been no new commitments to prison under s. 836.12, F.S. in the last four fiscal years.¹⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on jail beds by expanding the scope of personnel protected from specified threats and by creating a new misdemeanor offense for harassing specified personnel with specified intent, which may result in increased jail admissions.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

CS/HB 67 may implicate the First Amendment. The First Amendment of the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."¹⁸ The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.¹⁹

¹⁷ Criminal Justice Impact Conference, CS/HB 67 – Protection of Specified Personnel, March 27, 2023, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB67.pdf> (last visited April 4, 2023).

¹⁸ U.S. Const., amend. I.

¹⁹ U.S. Const. amend. XIV. See also Art. I, Fla. Const.

The U.S. Supreme Court has emphasized that the First Amendment right to free speech includes a right to make hate speech, holding recently as a “bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.”²⁰ However, the First Amendment does not protect “true threats,” and the government may restrict such speech²¹ to “protect[] individuals from the fear of violence” and from “the disruption that fear engenders,” in addition to protecting persons “from the possibility that the threatened violence will occur.”²² Additionally, “prohibiting harassment is not prohibiting speech, because harassment is not a protected speech. Harassment is not communication, although it may take the form of speech.”²³

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and one amendment to the PCS and reported the bill favorably as a committee substitute. The PCS as amended differed from the original bill as it:

- Amended s. 836.12, F.S., relating to threats against specified personnel instead of s. 365.16, F.S., relating to obscene and harassing phone calls.
- Narrowed the scope of persons protected from unwanted threats and harassment from being generally applicable to applying only to specified personnel;
- Decreased the penalty for committing prohibited conduct from a third-degree felony to a first-degree misdemeanor; and
- Defined the term “judicial assistant.”

The analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

²⁰ *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017).

²¹ *Virginia v. Black*, 538 U.S. 343, 344 (2003) quoting *Watts v. United States*, 394 U.S. 705, 708 (1969).

²² *Id.* See also *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992).

²³ *Gilbreath v. State*, 650 So. 2d 10 (Fla. 1995).