

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 Judiciary Committee

BILL: SB 262

INTRODUCER: Senators Ring and Dockery

SUBJECT: Intimidation of a Judge

DATE: March 11, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Boland	Maclure	JU	Unfavorable
2.	_____	_____	CJ	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill criminalizes any attempt to alter or affect a decision or ruling, through intimidation or threats to a judge, by anyone having a significant interest in a legal or administrative proceeding. The bill defines “intimidation or threats” to include indirect or veiled threats, fabrication of situations that require judicial recusal, and contacts under false pretenses that might reasonably cause a judge to feel threatened.

The bill makes the intimidation or threat a misdemeanor if the underlying proceeding is a misdemeanor or civil proceeding, or if the offender is acting on behalf of another person who is a party to the proceeding. It makes the intimidation or threat a felony of the third degree if the underlying proceeding is a felony.

The bill creates an undesignated section of the Florida Statutes.

II. Present Situation:

Rising Threats and Violence Against Judges

Security for judges and their families is among the challenges and concerns facing the judicial system today. A May 2009 Washington Post article reported that “threats and harassing communications against federal-court personnel have more than doubled in the past six years, from 592 to 1,278.”¹ The article emphasizes the severity of the problem, stating that a 24-hour

¹ Jerry Markon, *Threats against judges, prosecutors escalate*, The Seattle Times, http://seattletimes.nwsourc.com/html/nationworld/2009259159_judges25.html.

“threat management” center recently opened in Virginia and is staffed by about 25 U.S. marshals who analyze threats against judges.² Although the article primarily deals with incidents involving federal judges, it recognizes that “state court officials are seeing the same trend.”³ The Florida Legislature has recognized the risk of threats or violence against judges, as well.⁴ In creating a public records exemption for identifying and locating information pertaining to current and former U.S. attorneys and judges, the Legislature found that:

the duties of these current and former attorneys and judges do not create good will among the accused, the convicted, their associates, and families, and make those federal attorneys and judges potential targets for acts of revenge. Further, their duties make their spouses and children potential targets for acts of revenge.⁵

In the last six years, the United States has seen many incidents of violence against judges or other court officers. Among those incidents, in 2005 the husband and mother of a U.S. District judge were murdered. Shortly thereafter, a rape suspect in Atlanta killed a judge, court stenographer, and a deputy. In 2008 numerous pipe bombs exploded outside a federal courthouse in San Diego. Another defendant with a razor blade choked a federal prosecutor during sentencing.⁶ Because of the severity of these incidents, judges and other court officers have developed protocols and procedures to protect themselves from these situations.

Current Law on Influence and Threats in Judicial Proceedings

There are laws providing for punishment and prosecution of incidents comparable to the ones described above. One example is a Florida statute that criminalizes corruption by threat against a public servant. Section 838.021, F.S., makes it 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 intent to:

- Influence the performance of any act or omission that the person believes to be within the official discretion of the public servant;
- Cause or induce the public servant to use or exert, or procure the use or exertion of, any influence upon or with any other public servant regarding an act that the person believes to be within the official discretion of the public servant, in violation of a public duty.

Harm to a public official is punishable as a second-degree felony, and threatening harm is punishable as a third-degree felony.⁷

Similarly, a federal statute makes it a crime to influence, impede, or retaliate against a federal official by threatening or injuring one of a judge’s family members.⁸

² *Id.*

³ *Id.*

⁴ *See, e.g.*, ch. 2004-95, L.O.F.

⁵ Chapter 2004-95, L.O.F., s. 2.

⁶ Markon, *supra* note 1

⁷ Section 838.021(3), F.S.

⁸ 18 U.S.C.A. s. 115.

Additionally, in the regulatory context, the Florida Bar Rules provide that a “lawyer shall not seek to influence a judge ... or other decision maker except as permitted by law or the rules of court.”⁹ The same rule also states that a lawyer shall not communicate or cause another to communicate as to the merits of the cause with a judge or an official before whom the proceeding is pending except in certain specifically authorized, enumerated situations.¹⁰

The above-cited statutes and rule address overt actions that seek to improperly threaten or influence a judge. However, less obvious incidents or attempts to intimidate or threaten a judge may not be prosecuted because they do not fit within the ambit of an existing criminal statute. In these less-overt situations, judges may still feel that their personal safety or their professional credibility as a judge has been attacked. Additionally, a judge may feel pressured to recuse himself or herself from a case based on a person’s contacts or other interactions with the judge.

III. Effect of Proposed Changes:

The bill makes it a crime for anyone who has a significant interest in a legal or administrative proceeding to attempt to alter or affect a decision or ruling through intimidation or threats. The bill defines “intimidation or threats” as actions or words that:

- Directly or indirectly threaten physical force, economic loss, damage to property, damage to career, or damage to the reputation of a judge or a member of the judge’s immediate family;
- Are intended to create a situation requiring recusal or disqualification of a judge; or
- Consist of contacts or attempts to contact or that create a pattern of contact with a judge or a member of the judge’s immediate family under false pretenses which would reasonably cause a judge or a member of the judge’s immediate family to fear for his or her safety.¹¹

The bill makes the above conduct a misdemeanor of the first degree if the underlying proceeding is a civil or administrative proceeding or the prosecution of a misdemeanor, or if the offender is acting on behalf of another person who is a party to the proceeding. However, the bill makes such conduct a felony of the third degree if the underlying proceeding is the prosecution of a felony.

By defining “intimidation or threats” to include indirect or veiled threats, fabrication of situations that require judicial recusal, and contacts under false pretenses that reasonably cause a judge to feel threatened, this bill may cover situations not covered by current criminal statutes. It creates a crime that prosecutors may use to address situations where improper conduct has occurred, but where such conduct does not rise to the level of overt threats.

⁹ Fla. Bar R. 4-3.5.

¹⁰ *Id.*

¹¹ This list is non-exclusive.

The bill also defines “judge” as any judge or justice authorized by the State Constitution, an administrative hearing officer, an administrative law judge, a magistrate, or an officer of the state acting in an adjudicatory capacity.

The bill provides an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court in *State v. Wershow* held that a statute that criminalized “any malpractice in office not otherwise especially provided” was unconstitutionally vague, as it did not sufficiently convey a definite warning as to the proscribed conduct that men of common understanding could comprehend.¹² Article I, Section 9 of the Florida Constitution provides that “No person shall be deprived of life, liberty or property without due process of law.”¹³ The Florida Supreme Court has interpreted due process, as established by Article I, section 9 of the Florida Constitution and the Fifth and Fourteenth Amendments of the Constitution of the United States, to require that “the Legislature, in the promulgation of a penal statute, uses language sufficiently definite to apprise those to whom it applies what conduct on their part is prohibited.”¹⁴ Further, the Court went on to state that it is unconstitutional for the Legislature to employ vague language that would force a person of common intelligence to guess as to the statute’s meaning and then be subject to arrest and punishment if the guess is wrong.¹⁵

Under the test that the Florida Supreme Court has set to determine whether a statute is unconstitutionally vague, the bill might be subject to a constitutional challenge on the ground that the third enumerated definition of “intimidation or threats” may not convey a definite warning as to the proscribed conduct. The bill language proscribes words that:

Consist of contacts or attempts to contact or that create a pattern of contact with a judge or a member of the judge’s immediate family

¹² *State v. Wershow*, 343 So. 2d 605, 610 (Fla. 1977).

¹³ FLA. CONST. art. I, s. 9.

¹⁴ *Wershow*, at 608.

¹⁵ *Id.*

under false pretenses which would reasonably cause a judge or a member of the judge's immediate family to fear for his or her safety.

Due to the breadth of conduct this language encompasses, a defendant may argue that the language is vague to the extent that it causes a person of common intelligence to speculate as to its meaning and thereby fails to apprise those to whom it applies what conduct is prohibited. If the court were to agree with such an argument, it is possible that at least the individual provision could be struck. However, the Court in *State v. Wershow* also held that, in order for legislation to be constitutional, objective guidelines and standards must appear expressly in the law or be within the realm of reasonable inference from the language of the law.¹⁶ If a court were to find that the third definition of "intimidation or threats" provides objective guidelines that are within the realm of reasonable inference from the language of the law, then it might uphold the provision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A violation of the offense created by the bill, depending upon the circumstances of the case, is either a first-degree misdemeanor or a third-degree felony, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. Section 775.083, F.S., authorizes a fine not exceeding \$1,000 for conviction of a first-degree misdemeanor and \$5,000 for a third-degree felony.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimated that the bill would have an insignificant prison bed impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

¹⁶ *Wershow*, at 609.

B. Amendments:

None.

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