

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 Committee on Appropriations

BILL: PCS/CS/SB 436 (418634)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee and Senator Simpson

SUBJECT: Terroristic Threats

DATE: February 24, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2. <u>Clodfelter</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3. <u>Clodfelter</u>	<u>Kynoch</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 436 amends sections 790.163 and 790.164, Florida Statutes., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner. Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine.

The bill also creates section 836.12, Florida Statutes, which includes a provision requiring a person who is convicted of violating section 790.163, Florida Statutes, or section 790.164, Florida Statutes, to pay restitution for all costs and damages caused by an evacuation that results from the violation if it:

- Caused the occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations; or
- Involved a threat against a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or a family member of one of the identified persons.

Newly created section 836.12, Florida Statutes, also makes it unlawful for a person to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing, terror or the evacuation of a building, place of assembly, or facility of public transportation. The offense does not have a specified penalty.

The Criminal Justice Impact Conference has not reviewed the bill in its current form. However, it appears that the bill likely will result in an indeterminate increase in the prison population.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Threat to Throw, Project, Place or Discharge any Destructive Device

Section 790.162, F.S., makes it a second degree felony¹ if a person threatens to throw, project, place, or discharge any destructive device with intent to do bodily harm to any person or with intent to do damage to any property of any person.

False reports concerning planting bomb, explosive, or weapon of mass destruction

Section 790.163, F.S., makes it a second degree felony if a person makes a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, or other deadly explosive, or weapon of mass destruction.² Persons who are convicted of commission of this offense that resulted in the mobilization or action of any law enforcement officer or any state or local agency, may be required by the court to pay restitution for all of the costs and damages arising from the criminal conduct.

False reports concerning planting a bomb, explosive, or weapon of mass destruction in, or committing arson against, state-owned property

Section 790.164, F.S., includes the same elements and has the same penalties as s. 790.163, F.S., but adds the additional element that the threat must relate to property owned by the state or any political subdivision. Additionally, this section prohibits threats concerning any act of arson or other violence to property owned by the state or a political subdivision. This section includes the same provision for restitution that is in s. 790.163, F.S.

Planting of “hoax bomb”

Section 790.165, F.S., makes it a second degree felony if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a “hoax bomb.”³

¹ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. *See, ss. 775.082 and 775.083, F.S.*

² “Weapon of mass destruction” is defined in s. 790.166(1)(a), F.S., to mean 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; any device or object involving a biological agent or that is designed or intended to release radiation or radioactivity at a level dangerous to human or animal life or any biological agent, toxin, vector, or delivery system.

³ “Hoax bomb” is defined in s. 790.165(1), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be, or to contain, or is represented to be or to contain a destructive device or explosive but is in fact inoperable.

Manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction

Section 790.166, F.S., makes it a first degree felony⁴ if a person, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use or conspires to use, or makes readily accessible to others, a weapon of mass destruction.⁵ The offense is a second degree felony if the device is a hoax weapon of mass destruction.⁶

False reports of commission of crimes

Section 817.49, F.S., provides that it is a first degree misdemeanor⁷ to willfully impart, convey or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under Florida law, knowing the information to be false in that no such crime had actually been committed.

Threats; extortion

Section 836.05, F.S., provides that it is a second degree felony to maliciously, by verbal, written, or printed communication, to injure the person or property of another with intent to compel the threatened person, or any other person, to do any act or refrain from doing any act against his or her will.

Written Threats to Kill or Do Bodily Injury

Section 836.10, F.S., provides that it is a second degree felony to write or compose and send, or procure the sending of, any written communication containing a threat to kill or do bodily injury to the person to whom the letter 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.

False reports to law enforcement authorities

Section 837.05, F.S., provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime. The penalty may be enhanced to a third degree felony under certain circumstances.

⁴ A first degree felony is punishable by up to 30 years in state prison and a fine of up to \$10,000. *See* ss. 775.082 and 775.083, F.S.

⁵ For purposes of this section, the term “weapon of mass destruction” does not include self-defense devices that are lawfully possessed or used for self protection.

⁶ “Hoax weapon of mass destruction” is defined in s. 790.166(1)(b), F.S., to mean any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not meet the definition of a weapon of mass destruction or which does not actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

⁷ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. *See*, ss. 775.082, and 775.083, F.S.

Corruption by threat against public servants

Section 838.021, F.S., makes it a felony to unlawfully harm or threaten to harm any public servant,⁸ his or her immediate family, or any other person whose welfare the public servant is interested with the intent or purpose of:

- Influencing 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 or performance of a public duty⁹;
- Causing or inducing the public servant to use or exert, or procure the use of exertion of any influence upon or with any other public servant regarding any act or omission which the defendant believes to be or the public servant represents as being, within the official discretion of the public servant, in violation or performance of a public duty.¹⁰

Prosecution under this section does not require allegation or proof that:

- The public servant ultimately sought to be unlawfully influenced was qualified to act in the desired way;
- That the public servant had assumed office;
- That the matter was properly pending before him or her or might by law properly be brought before him or her;
- That the public servant possessed jurisdiction over the matter; or
- That his or her official action was necessary to achieve the person's purpose.¹¹

It is a second degree felony if the defendant actually does harm or a third degree felony¹² if the defendant threatens harm.

Breach of the peace; disorderly conduct

Section 877.03, F.S., provides that it is a second degree misdemeanor¹³ to "... engage in such conduct as to constitute a breach of the peace or disorderly conduct." The Florida Supreme Court has narrowed the scope of the conduct that is prohibited under this section:

In light of these considerations, we now limit the application of Section 877.03 so that it shall hereafter only apply either to words which "by their very utterance ... inflict injury or tend to incite an immediate breach of the peace," or to words, known to be false, reporting some physical hazard in circumstances where such a report creates a clear and present danger of bodily harm to others. We construe the statute so that no words except "fighting words" or words like shouts of "fire" in a crowded theatre fall within its proscription, in order to avoid the constitutional

⁸ Section 838.021, F.S.

⁹ Section 838.021(1)(a), F.S.

¹⁰ Section 838.021(1)(b), F.S.

¹¹ Section 838.021(2), F.S.

¹² A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. *See*, ss. 775.082 and 775.083, F.S.

¹³ A second degree misdemeanor is punishable by up to sixty days in county jail and a \$500 fine. *See*, ss. 775.082, and 775.083, F.S.

problem of overbreadth, and “the danger that a citizen will be punished as a criminal for exercising his right of free speech.”¹⁴

Disruption of educational institutions or school boards

Section 877.13, F.S., provides that it is a second degree misdemeanor to knowingly disrupt or interfere with the lawful administration or functions of any educational institution, school board, or activity on school board property; to knowingly interfere with the attendance of any other school pupil or school employee in a school or classroom; or to engage in any school campus or school function disruption or disturbance which interferes with the educational processes or with the orderly conduct of a school campus, school, or school board function or activity on school board property.

The Pasco Sheriff’s Office (Sheriff’s Office) asserts that this bill would address issues that existing statutes do not, including clearly prohibiting threats to do harm by use of firearms. According to the Sheriff’s Office, the bill’s inclusion of all types of threats, application even if a specific victim is not identified in the threat, and inclusion of threats that are made with the intent to cause terror or evacuation of a location, would give law enforcement the necessary tools to bring charges when these types of events take place.

III. Effect of Proposed Changes:

Sections 1 and 2 of the bill amend ss. 790.163 and 790.164, F.S., which prohibit making false reports concerning planting a bomb, explosive, or weapon of mass destruction, to also prohibit making a false report concerning use of a firearm in a violent manner.¹⁵ Commission of either of these offenses is a second degree felony, punishable by up to 15 years imprisonment and a \$10,000 fine.

Section 3 of the bill creates s. 836.12, F.S., relating to terroristic threats. Subsection (1) defines “law enforcement officer” to mean the same as the definition of the term in s. 943.10, F.S., and defines “family member” to be “an individual related to the person by blood or marriage; or an individual to whom the person stands in loco parentis.”¹⁶

Subsection (2) makes it unlawful to threaten to commit a crime of violence with the intent to cause, or with reckless disregard for the risk of causing:

- Terror; or
- Evacuation of a building, place of assembly, or facility of public transportation.

¹⁴ *State v. Saunders*, 339 So.2d 641, 644 (Fla.1976) (internal citations omitted) (quoting *White v. State*, 330 So.2d 3, 7 (Fla.1976), and *Spears v. State*, 337 So.2d 977, 980 (Fla.1976)).

¹⁵ Section 790.194, F.S., differs from s. 790.193, F.S., by adding an additional element of proof that the threat was made against property owned by the state or a political subdivision. As worded, the amendment to s. 790.194, F.S., does not apply the additional element of proof to false reports concerning use of a firearm in a violent manner. Therefore, there is no difference between the elements of proof for the two offenses with regard to false reports concerning use of a firearm in a violent manner.

¹⁶ “In loco parentis” means “in the place of a parent.” MERRIAM-WEBSTER, *In Loco Parentis*, <http://www.merriam-webster.com/dictionary/in%20loco%20parentis> (last visited February 5, 2016).

The bill does not provide any penalty for this unlawful act.¹⁷

Subsection (3) creates a new criminal offense that applies to a person who violates s. 790.163, F.S., or s. 790.164, F.S., if the violation:

- Causes occupants of the building, place of assembly, or facility of public transportation to be diverted from their normal or customary operations; or
- Involves a threat against a law enforcement officer, a state attorney or assistant state attorney, a firefighter, a judge, an elected official, or any of their family members.

Like ss. 790.163 and 790.164, F.S., the new offense created in subsection (3) is a second degree felony.¹⁸

Subsection (4) provides that a person who is convicted of violating subsection (3) must pay restitution for all costs and damages caused by an evacuation resulting from the violation, in addition to any other restitution or penalty provided by law.

Section 4 of the bill amends s. 921.0022, the Criminal Punishment Code Offense Severity Ranking Chart (Ranking Chart), to add false reports concerning use of a firearm in a violent manner to the description of ss. 790.163 and 790.164, F.S.

Sections 5 and 6 of the bill republish ss. 1006.07(2)(m) and 1006.13(2)(b), F.S., respectively, to incorporate amendments made to s. 790.163, F.S.

The bill has an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ The unlawful act is not a crime because no penalty is specified and the new offense is not designated as a felony or a misdemeanor. If considered a noncriminal violation, the unlawful act is punishable by a fine not exceeding \$500. *See* ss. 775.08 and 775.083, F.S.

¹⁸ Section 921.0022, F.S., the Criminal Punishment Code Offense Severity Ranking Chart (Ranking Chart), ranks criminal offenses from Levels 1 through 10, with Level 1 including the least severe offenses and Level 10 including the most severe offenses. The rankings assign sentencing points that are used to calculate the lowest permissible sentence that may be imposed for an offense. Section 790.163 is ranked in Level 5 of the Ranking Chart and s. 790.164, F.S., is ranked in Level 6. The new offense is not listed in the Ranking Chart, and therefore is ranked in Level 4 by operation of s. 921.0023, F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

PCS/CS/SB 436 differs significantly from CS/SB 436. As a result, the Criminal Justice Impact Conference (CJIC) estimate for HB 257, which is similar to CS/SB 436, can no longer be used to estimate the fiscal impact of PCS/CS/SB 436. The new criminal offenses created in ss. 790.163 and 790.164, F.S., by the proposed committee substitute may be chargeable as crimes under current law in many factual situations. However, it is not possible to project how often the new offenses would be charged or, if there is an existing offense, whether charging the criminal activity as a violation of ss. 790.163 or 790.164, F.S., would result in an increase in the penalty. Therefore, it appears that PCS/CS/SB 436 will result in an indeterminate increase in the prison population.

VI. Technical Deficiencies:

- As noted in Section III of this Analysis, no penalty is specified for the unlawful activity proscribed in s. 836.12 (2), F.S., created by the bill, and the unlawful activity is not designated as a felony or a misdemeanor. Therefore, the unlawful activity is not a crime but may be a noncriminal violation punishable by a fine not exceeding \$500. *See* ss. 775.08 and 775.083, F.S.
- The unlawful act created in new s. 836.12(2), F.S., does not include definitions of the terms “terror” or “facility of public transportation.” As a result, an offender who is charged with committing the unlawful act may claim that the statute is unconstitutional because of vagueness. *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972).
- Proving a violation of the second degree felony offense created in new s. 836.12(3), F.S., requires proof that the offender violated either s. 790.693 or 790.694, F.S., plus proof of an additional element. However, the new offense would be ranked as a less severe offense on the Ranking Chart.
- Consideration should be given to amending ss. 1006.07(2)(m) and 1006.13(3)(b), F.S., to include a reference to s. 790.164, F.S., which applies to threats involving school property.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following sections of the Florida Statutes: 790.163, 790.164, and 921.0022.

This bill creates section 836.12, of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 1006.7(2)(m) and 1006.13(3)(b).

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 11, 2016:

The committee substitute:

- Amends ss. 790.163 and 790.164, F.S., to prohibit making a false report concerning use of a firearm in a violent manner.
- Creates s. 835.12, F.S., which:
 - Expands the requirement to pay restitution for costs and damages that result from a violation of s. 790.163 or s. 790.164, F.S.; and
 - Makes threatening to commit a crime of violence in specified circumstances an unlawful act.

CS by Criminal Justice on January 25, 2016:

- Adds and clarifies definitions.
- Revises the prohibition in the bill to apply to threats to commit a crime of violence with intent to cause, or reckless disregard for causing terror or the evacuation of a public building, place of assembly, or facility of public transportation.
- Clarifies the requirement for persons convicted under the bill to pay restitution.
- The effective date is changed from October 1, 2016 to July 1, 2016.

B. Amendments:

None.