

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: CS/SB 436

INTRODUCER: Criminal Justice Committee; and Senators Simpson and Dean

SUBJECT: Terroristic Threats

DATE: February 24, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 436 creates new criminal offenses relating to terroristic threats. The bill 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.

Persons violating this offense commit a third degree felony punishable by up to five years imprisonment and a \$5,000 fine. Persons commit a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine if occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations; if the threat is against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, or elected official; or if the threat is against a family member of one of the identified persons.

The bill provides that in addition to any restitution or penalty, persons violating this section shall pay restitution for all costs and damages caused by the evacuation resulting from the criminal conduct.

The Criminal Justice Impact Conference reviewed HB 257, which is similar to this bill, and found that it will have a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). It appears that the differences between this bill and HB 257 would not change the prison bed impact.

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 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.

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:

The bill creates s. 836.12, F.S., dealing with terroristic threats, and makes it a third degree felony 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.

Persons commit a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine if:

- Occupants of the building, place of assembly, or facility of public transportation are diverted from their normal or customary operations; or
- The threat is against instructional personnel, a law enforcement officer, state attorney or assistant state attorney, firefighter, judge, elected official, or any of their family members.

The bill requires any person violating the new criminal offense, in addition to any restitution or penalty, to pay restitution for all costs and damages caused by the evacuation resulting from the criminal conduct.

For purposes of the act the bill provides the following definitions:

- “Facility of public transportation” – is defined as a public conveyance and any area, structure, or device which is used to support, guide, control, permit, or facilitate the movement, starting, stopping, takeoff, landing, or servicing of a public conveyance, or the loading or unloading of passengers, freight, or goods and includes a passenger or freight

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)).

train, airplane, bus, truck, car, boat, tramway, gondola, lift, elevator, escalator, or other device used for the public carriage of persons or property.

- “Family member of a person” is defined as:
 - An individual related to the person by blood or marriage;
 - An individual living in the person’s household or having the same legal residence as the person;
 - An individual who is engaged to be married to the person, or who holds himself or herself out as, or is generally known as, an individual whom the person intends to marry; or
 - An individual to whom the person stands in loco parentis.¹⁵
- “Instructional personnel” is defined in accordance with s. 1012.01, F.S.¹⁶
- “Law enforcement officer” is defined as a current or former:
 - Law enforcement officer, correctional officer, correctional probation officer, part-time law enforcement officer, part-time correctional officer, part-time correctional probation officer, auxiliary law enforcement officer, auxiliary correctional officer, or auxiliary correctional probation officer, as those terms are respectively defined in s. 943.10, or a county probation officer;
 - Employee or agent of the Department of Corrections who supervises or provides services to inmates;
 - Officer of the Florida Commission on Offender Review;
 - Federal law enforcement officer as defined in s. 901.1505; or
 - Law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

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.

¹⁵ “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).

¹⁶ “Instructional personnel” means any K-12 staff member whose function includes the provision of direct instructional services to students. The term also includes K-12 personnel whose functions provide direct support in the learning process of students. *See, s. 1012.01(2), F.S.*

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference reviewed HB 257, which is similar to CS/SB 436, and determined that it will have a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). It appears that the differences between this bill and HB 257 would not change this determination.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 836.12 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.)

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.