

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 260

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Threats to Kill or Do Bodily Injury

DATE: April 19, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>
4.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 260 amends section 836.10, Florida Statutes, to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

The bill:

- Reorganizes the elements of the offense so that section 836.10(1)(b), Florida Statutes, clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that violate section 836.10, Florida Statutes.
- Creates a definition for the term “electronic record.”
- Provides that a juvenile who violates section 836.10, Florida Statutes, commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of section 836.10, Florida Statutes, to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

This bill makes section 836.10, Florida Statutes, applicable to circumstances where a person transmits a threat to kill or do bodily injury to another in a more public forum than the current law contemplates.

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

The bill is effective October 1, 2017.

II. Present Situation:

When s. 836.10, F.S., was enacted in 1913, social media was limited to the “pen and paper” written word, the newspaper, and possibly the radio.

Having been amended in 2010¹ to add “electronic communication,” s. 836.10, F.S., currently prohibits a person from:

- Writing or composing and sending to any person:
 - A letter,
 - Inscribed communication, or
 - Electronic communication,
- Containing a threat to kill or do bodily injury to:
 - The person to whom the letter or communication was sent, or
 - Any member of the person’s family.²

The act of “sending” under the statute requires two events – sending the communication to a particular person *and* receipt of the communication by the person being threatened.³

When the target of the threat is not necessarily a particular individual, but more random in nature, it is then that the application of the statute breaks down, particularly as related to social media.

Social Media

Studies indicate that social media sites and other apps are widely used to communicate with other people and to find information. For example, recent publications by the Pew Research Center report that:

- 86 percent of Americans use the internet;⁴
- Of the surveyed 1,520 adults in one study, 79 percent use Facebook, 32 percent use Instagram, 31 percent use Pinterest, 29 percent use LinkedIn, and 24 percent use Twitter;⁵ and

¹ Chapter 2010-51, Laws of Florida.

² A violation of s. 836.10, F.S., is a second degree felony, punishable by up to 15 years in prison and a fine of up to \$10,000. ss. 775.082, 775.083, and 775.084, F.S.

³ *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2nd DCA 1995).

⁴ Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

⁵ Pew Research Center, November 2016, “Social Media Update,” pages 1-2.

- In a survey of 1,060 teens ages 13-17 and their parent or guardian, when asked about the use of specific sites, 89 percent of all teens reported the use of at least one of the sites and 71 percent used 2 or more of the sites.⁶

Examples of Random School Threats Using E-Mail

In late 2015, there was a rash of e-mailed hoax threats against schools across the country that began in New York City and Los Angeles.⁷ The New York and Los Angeles threats were nearly identically worded, threatening the use of bombs, nerve gas, and rifles, and routed through a server in Frankfurt, Germany, apparently by the same person.⁸ A few days later, similar threats were directed at schools in Florida.⁹ Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools in one recent study covering half the 2013-14 school year in 43 states.¹⁰

Case Law Applying Current Statute

In a 2016 court decision, a juvenile's disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹¹ was reversed.¹² The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.¹³ The tweets were discovered by an out-of-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 Appeals 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.

⁶ Pew Research Center, April 2015, "Teen, Social Media and Technology Overview 2015," pages 7 and 25.

⁷ "Los Angeles and New York Differ in Their Responses to a Terrorism Threat," The New York Times, December 15, 2015, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited March 13, 2017).

⁸ Id.

⁹ "Miami-Dade, Broward Schools Receive Threats: Officials," Krista Deans, NBC News 6, December 17, 2015, <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited March 20, 2016). See also, "Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say," Crystal Moyer, WJXT News 4 Jacksonville, December 9, 2015, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited March 20, 2016).

¹⁰ "Schools face new wave of violent threats sent by social media and other electronic means," National School Safety and Security Services, February 25, 2014, (reporting on 315 documented school bomb threats, shooting threats, hoaxes, and acts of violence between August 2013 and January 2014), available at <http://www.schoolsecurity.org/2014/02/schools-face-new-wave-violent-threats-sent-social-media-electronic-means-study-says/> (last visited March 13, 2017).

¹¹ "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," February 9, 2009, available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited March 13, 2017).

¹² *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

¹³ 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 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." *J.A.W. v. State*, 41 Fla.L.Weekly D 2227 (Fla. 2nd DCA, 2016).

The court specifically discussed the difficulty of applying the current statute to modern forms of communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the threatening communication to be sent directly to a specific person who receives the threat.¹⁴

Warrantless Arrest

Section 901.15, F.S., provides that a law enforcement officer may arrest a person without a warrant when:

- The person has committed a felony or misdemeanor or violated a municipal or county ordinance in the presence of the officer. An arrest for the commission of a misdemeanor or the violation of a municipal or county ordinance shall be made immediately or in fresh pursuit.
- A felony has been committed and he or she reasonably believes that the person committed it.
- He or she reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it.
- A warrant for the arrest has been issued and is held by another officer for execution.

The principal components of a determination of reasonable suspicion or probable cause are the events that occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion or to probable cause.¹⁵

The general rule is that an officer must witness a misdemeanor occurring in order to make a warrantless arrest; however, currently there are statutory exemptions from this requirement in s. 901.15, F.S.¹⁶

III. Effect of Proposed Changes:

Section 1 amends s. 836.10, F.S., to delete the current statutory requirements that a specific person be directly threatened by a person making a threat through means of a letter, inscribed communication, or electronic communication, and that the specific person actually receive the threat.

This section prohibits more modern communication circumstances in the context of threats to kill or do bodily injury to another than the statute as currently written.

This section prohibits a person from making a threat to kill or injure another:

- In writing or other record, including an electronic record; or
- By posting or transmitting the threat, or procuring the posting or transmission, in a manner that would allow any person to view the threat.

¹⁴ *J.A.W. v. State*, 41 Fla.L. Weekly D 2227 (Fla. 2nd DCA, 2016).

¹⁵ *State v. Cuomo*, 43 So. 3d 838 (Fla. 1st DCA, 2010); see also *Ornelas v. United States*, 517 U.S. 690, 696-97 (1996).

¹⁶ For example, s. 901.15(9), F.S., provides that the officer may make an arrest without a warrant when there is probable cause to believe that the person has committed: Any battery upon another person, as defined in s. 784.03, F.S.; an act of criminal mischief or a graffiti-related offense as described in s. 806.13, F.S.; or a violation of a safety zone, security zone, regulated navigation area, or naval vessel protection zone as described in s. 327.461, F.S.

The term “electronic record” is defined as “relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.”

Section 2 amends s. 901.15, F.S., to include a violation of s. 836.10, F.S., as the basis for a lawful arrest by an officer without a warrant, if the officer has probable cause to believe a person has committed the offense.

The current second degree felony penalties remain in the statute for adult offenders. Section 1 amends s. 836.10, F.S., to create a first degree misdemeanor applicable to juvenile offenders.

Sections 3, 4, and 5 reenacts ss. 794.056, 921.0022, and 938.085, F.S., respectively, to incorporate the changes made by the bill to s. 836.10, F.S.

The bill is effective October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Justice Administrative Commission has indicated that there is no expected fiscal impact to the agency related to the bill.¹⁷

On March 2, 2017, the Criminal Justice Impact Conference considered HB 575, the substantive provisions of which were identical to SB 260 in its original form. The

¹⁷ Memorandum No. 002-17, Exec., Justice Administrative Commission.

Conference adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that although there may be additional inmates incarcerated in state prison resulting from this bill the number is unquantifiable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 836.10 and 901.15.

This bill reenacts the following sections of the Florida Statutes: 794.056, 921.0022, and 938.085.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Criminal Justice on March 27, 2017:

The committee substitute:

- Reorganizes the elements of the offense so that s. 836.10(1)(b), F.S., clearly provides for a violation of the statute if a threat is posted or transmitted in a manner that would allow *any* person to view the threat (emphasis added). This clarifies that a more general threat is included within the acts that would violate s. 836.10, F.S.
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- Provides that a juvenile who violates s. 836.10, F.S., commits a first degree misdemeanor (rather than the existing second degree felony).
- Adds a new exception, for a violation of s. 836.10, F.S., to the general rule that a misdemeanor must be committed in a law enforcement officer’s presence in order for a warrantless arrest to occur.

B. Amendments:

None.