

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 165 Threats to Kill or Do Great Bodily Injury  
**SPONSOR(S):** Justice Appropriations Subcommittee, Criminal Justice Subcommittee and McClain  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 310

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Hall	Sumner
2) Justice Appropriations Subcommittee	12 Y, 0 N, As CS	Smith	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

As the use of social media grows, the potential to use such forms of communication to make threats of violence also increases. In a recent study of online harassment, 10 percent of adult Internet users surveyed reported having been physically threatened online. A separate study found that over one-third of threats made to schools were delivered electronically, with 28 percent of those threats delivered through social media.

Currently, s. 836.10, F.S., makes it a second-degree felony to compose and send certain written threats, including electronic communications, to kill or do bodily injury. To violate this section, a person must:

- Write or compose a threat to kill or do bodily injury; and
- Send, or procure the sending of, the communication to the person threatened or family member of the person threatened.

Recently, the Second District Court of Appeals issued an opinion highlighting the difficulty of applying s. 836.10, F.S., to threats issued and shared publicly on social media, as such threats may not be communicated directly to any specific person. In this case, a juvenile's conviction for violating s. 836.10, F.S., was overturned, although the juvenile had posted multiple threats of school violence on Twitter, because the threats were not directly sent to or received by any of the threatened students or school officials.

CS/CS/HB 165 amends s. 836.10, F.S., to prohibit a person from:

- Making a threat in a writing or other record, including an electronic record, to kill or do great bodily injury to another person; and
- Posting or transmitting the threat in any manner that would allow another person to view the threat.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. The bill reclassifies the offense as a felony of the third-degree, and amends s. 921.002(3)(f), making conforming changes to the Criminal Punishment Code.

The Criminal Justice Impact Conference (CJIC) considered a similar version of this bill on March 2, 2017, and determined that it would increase the prison population by an unquantifiable amount.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

According to a recent study, 62 percent of adult Internet users view online harassment as a major problem.<sup>1</sup> The study found that 18 percent of adults surveyed had experienced some form of severe harassment online, such as physical threats, harassment over a sustained period of time, sexual harassment or stalking. Ten percent of those adults had experienced physical threats directed at them online.<sup>2</sup> In a separate study regarding violent threats to schools,<sup>3</sup> researchers found 37 percent of threats made to schools were sent electronically, using social media, text messaging, and other online resources. Of those electronic threats, 28 percent were made through social media.<sup>4</sup>

In 2010, the Legislature amended s. 836.10, F.S., to add “electronic communication” to the types of written threats that are prohibited, but left intact the requirement that the written threat be sent to the person who is the subject of the threat or to a person whose family member is the subject of the threat. The statute currently makes it a second-degree felony<sup>5</sup> for a person to write or compose and send or procure the sending of any letter, inscribed communication, or electronic communication that contains a threat to kill or do bodily injury to the person threatened or family member of the person threatened.

Criminal defendants have challenged the statute alleging it is vague and overbroad, arguing that the statute could criminalize innocent written speech because it does not require proof that the defendant had the specific intent to cause the threatened harm.<sup>6</sup> Florida courts have held that s. 836.10, F.S., does not require the actual intent to do harm or the apparent ability to carry out the threat.<sup>7</sup> Additionally, the courts have upheld the statute finding it is definite enough to give notice of the behavior it proscribes and, thus, not vague. Further, it is limited enough in its objective to target threats to injure persons,<sup>8</sup> and, thus, not overbroad.<sup>9</sup>

In a 2016 decision, a juvenile’s disposition under s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter<sup>10</sup> was reversed.<sup>11</sup> The juvenile made a series of public posts on Twitter over the span of several days threatening to “shoot up” his school.<sup>12</sup> The tweets were discovered by an out-of-

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<sup>1</sup> Pew Research Center, *Online Harassment 2017*, (July 11, 2017), available at [http://assets.pewresearch.org/wp-content/uploads/sites/14/2017/07/10151519/PI\\_2017.07.11\\_Online-Harassment\\_FINAL.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/14/2017/07/10151519/PI_2017.07.11_Online-Harassment_FINAL.pdf) (last visited October 17, 2017).

<sup>2</sup> *Id.* at 13.

<sup>3</sup> The study was conducted by National School Safety and Security Services. It reviewed 812 school threats across the country from August 1 to December 31, 2014. Ken Trump, *Study finds rapid escalation of violent school threats*, <http://www.schoolsecurity.org/2015/02/study-finds-rapid-escalation-violent-school-threats/> (last visited October 17, 2017).

<sup>4</sup> *Id.*

<sup>5</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. SS. 775.082 and 775.083, F.S.

<sup>6</sup> *Saidi v. State*, 845 So. 2d 1022, 1026 (Fla. 5th DCA 2003).

<sup>7</sup> *Id.* at 1027.

<sup>8</sup> The First Amendment permits a state to ban a “true threat.” “‘True threats’ encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” *Virginia v. Black*, 538 U.S. 343, 359 (2003).

<sup>9</sup> *Reilly v. Department of Corrections*, 847 F. Supp. 951, 958 (M.D. Fla. 1994); See also *Smith v. State*, 532 So. 2d 50, 52 (Fla. 2d DCA 1988).

<sup>10</sup> “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*, <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited October 17, 2017).

<sup>11</sup> *J.A.W. v. State*, 210 So. 3d 142 (Fla. 2d DCA 2016).

<sup>12</sup> 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

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. The court specifically highlighted the difficulty of applying the current statute to modern forms of social media communication, recognizing that many threats made on social media fall outside the narrow scope of the law, which requires the communication to be sent directly to a specific person.<sup>13</sup>

## Effect of the Bill

CS/CS/HB 165 amends s. 836.10, F.S., to prohibit a person from:

- Making a threat in a writing or other record, including an electronic record, to kill or do great bodily injury to another person; and
- Posting or transmitting the threat in any manner that would allow another person to view the threat.

The bill removes the requirement that the written threat be sent to the person threatened or a member of his or her family. Written threats to kill or do great bodily injury to another person that are publicly posted online, even if not specifically sent to or received by the person who is the subject of the threat, are prohibited.

The term currently in statute "bodily injury", in reference to written threats, is changed to "great bodily injury". The phrase "great bodily injury" is not currently found in statute, however the term was used by the Florida Supreme Court when interpreting s. 784.045, F.S. related to aggravated battery.<sup>14</sup> "Consistent with the language and structure the Legislature used in drafting section 784.045(1)(a) 1, the Supreme Court condensed the terms great bodily harm, permanent disfigurement and permanent disability into the single, logical phrase "great bodily injury" to describe the first crime."<sup>15</sup>

The bill reclassifies the offense from a felony of the second-degree to a felony of the third-degree.<sup>16</sup> Additionally, the bill amends s. 921.002(3)(f), F.S., making conforming changes in the Criminal Punishment Code to reflect the amendments made to s. 836.10, F.S.

The bill reenacts ss. 794.056(1), and 938.085, relating to the Rape Crisis Program Trust Fund and the additional cost to fund rape crisis centers, respectively, to incorporate amendments made to s. 836.10, F.S.

The bill provides an effective date of July 1, 2018.

## B. SECTION DIRECTORY:

**Section 1:** Amends s. 836.10, F.S., relating to written threats to kill or do bodily injury; punishment.

**Section 2:** Reenacts s. 794.056(1), F.S. relating to the Rape Crisis Program Trust Fund.

**Section 3:** Amends s. 921.0022(3)(f), F.S., relating to the Criminal Punishment Code; offense severity ranking chart.

**Section 4:** Reenacts s. 938.085, F.S., relating to additional cost to fund rape crisis centers.

**Section 5:** Provides an effective date of July 1, 2018.

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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." Id.

<sup>13</sup> Id.

<sup>14</sup> *State v. Warren*, 796 So. 2d 489 (Fla. 2001)

<sup>15</sup> *Calloway v State*, 37 So. 3d 891 (Fla. 1st DCA 2010).

<sup>16</sup> A third-degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. SS. 775.082 and 775.083, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The Criminal Justice Impact Conference (CJIC) considered a similar version of this bill on March 2, 2017, and determined that it would increase the prison population by an unquantifiable amount.

According to the CJIC, "Per the Department of Corrections, in FY 15-16, there were 66 offenders sentenced for written threats to kill or do bodily injury, and 26 of these offenders were sentenced to prison. It is not known how many additional offenders would fall under the more expanded definition."<sup>17</sup>

Reducing the offense from a second-degree felony to a third-degree felony would likely reduce the number of offenders who would receive a prison sentence.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### 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. The bill appears to be exempt from the requirements of article VII, section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

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<sup>17</sup> Department of Economic and Demographic Research, *HB 575 – Threats to Kill or Do Bodily Injury*, "Criminal Justice Impact Conference", March 2, 2017, <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB575.pdf>

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On October 25, 2017, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment narrows the prohibited conduct that qualifies as a second-degree felony. The committee substitute prohibits a person from posting or transmitting a written threat to kill or do bodily injury in a manner that would allow another person to view the threat. This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

On December 6, 2017, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment narrows the scope of the bill and reclassifies the offense from a second-degree felony to a third-degree felony. The committee substitute prohibits a person from posting or transmitting a written threat to kill or do great bodily injury in a manner that would allow another person to view the threat. This analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.