

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/CS/SB 310

INTRODUCER: Appropriations Committee; Criminal Justice Committee; and Senators Steube and Baxley

SUBJECT: Threats to Kill or Do Great Bodily Injury

DATE: March 1, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Forbes</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 310 replaces the current statutory requirement that prohibits any person who writes or composes and sends a letter, inscribed communication, or electronic communication with a threat to kill or do bodily injury to a person or any member of the person's family, with language that prohibits a person from making a threat to kill or do great bodily injury in writing or other record, including an electronic record, and posting or transmitting the threat in a manner that would allow another person to view it.

Additionally, the offense is decreased from a second degree felony to a third degree felony. The bill also changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.

The bill also exempts providers of an interactive computer service, communications service, commercial mobile service, or information service from liability under s. 836.10, F.S.

The bill is expected to result in an unquantifiable increase in prison beds.

The bill takes effect October 1, 2018.

II. Present Situation:

Section 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.¹

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.²

When the threat is not necessarily made against a particular individual who receives the threat, but the threat is more random in nature, the application of the statute breaks down, particularly as related to social media.³

Social Media

Studies indicate that social media sites are widely used to communicate with other people and to find information. For example, reports published by the Pew Research Center show 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
- 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 sites⁶ and 71 percent used two or more of the sites.⁷

¹ 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. Sections 775.082, 775.083, and 775.084, F.S.

² *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016) citing *State v. Wise*, 664 So.2d 1028, 1030 (Fla. 2d DCA 1995).

³ "[M]any threats made on social media will fall outside the narrow language of section 836.10, which was originally written with pen-and-paper letters in mind. ... The narrow language of section 836.10 will not encompass many threats made via social media because...social media is often used to post communications publicly, for the whole world to see, instead of sending those communications directly to any specific person. (citation omitted) This is problematic because, even though social media posts may not travel directly, they are often shared with the understanding or expectation that they will be widely distributed, even outside the original poster's own network of friends or followers." *J.A.W. v. State*, 210 So.3d 142, 145-146 (Fla. 2d DCA 2016).

⁴ Pew Research Center, *Social Media Update 2016* (November 2016), available at <http://www.pewinternet.org/2016/11/11/social-media-update-2016/> (last visited January 23, 2018).

⁵ *Id.*

⁶ Pew Research Center, *Mobile Access Shifts Social Media Use and Other Online Activities*, (April 2015), available at <http://www.pewinternet.org/2015/04/09/mobile-access-shifts-social-media-use-and-other-online-activities/> (last visited January 24, 2018).

⁷ Pew Research Center, *Teens, Social Media and Technology Overview 2015* (April 2015), available at <http://www.pewinternet.org/2015/04/09/teens-social-media-technology-2015/> (last visited January 23, 2018).

Examples of Random Threats Using E-Mail and Social Media

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.⁸ The New York and Los Angeles threats were nearly identically worded. The e-mails threatened the use of bombs, nerve gas, and rifles, and were routed through a server in Frankfurt, Germany, apparently by the same person.⁹ A few days later, similar threats were directed at schools in Florida.¹⁰

Social media and other electronic forms of communication were used in at least 35 percent of the violent threats to schools, as reported in one recent study covering half of the 2013-14 school year in 43 states.¹¹

Florida Social Media Threats

Threats conveyed over social media to do random acts of violence at schools often disrupt student education regardless of the validity of the threat.

For example, in October 2017, three students made threats at two Panhandle high schools.¹² While no violence occurred on the high school campuses, school officials are concerned about the missed school hours, testing, and assignments resulting from the panic that can ensue from threats of violence communicated through social media.¹³

A police officer in Tarpon Springs was singled out and threatened with being killed in apparent retaliation for an officer-involved shooting in May 2017. According to a press release by the police chief, the threats, based on misinformation, were targeting an officer who had nothing to do with the officer-involved shooting.¹⁴

⁸ The New York Times, December 15, 2015, *Los Angeles and New York Differ in Their Responses to a Terrorism Threat*, available at <https://www.nytimes.com/2015/12/16/us/los-angeles-schools-bomb-threat.html> (last visited January 23, 2018).

⁹ *Id.*

¹⁰ NBC News 6, December 17, 2015, *Miami-Dade, Broward Schools Receive Threats: Officials*, available at <http://www.nbcmiami.com/news/local/Miami-Dade-School-System-Receives-Threat-Officials-362740851.html> (last visited January 23, 2018). *See also*, WJXT News 4 Jacksonville, December 9, 2015, *Frustration over 5 school bomb threats in 2 days, False calls frustrate law enforcement, but must be taken seriously, police say*, available at <http://www.news4jax.com/news/bomb-scare-forces-evacuation-of-southside-business> (last visited January 23, 2018).

¹¹ National School Safety and Security Services, *Schools face new wave of violent threats sent by social media and other electronic means study says*, February 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 January 23, 2018).

¹² “I think people take it more seriously now than ever, there’s no doubt in my mind about that and it’s justly so,” said Jason Weeks, Santa Rosa County School District director of high schools. *‘Just a joke’: Students’ social media threats are disrupting schools* (October 2017), available at <http://www.pnj.com/story/news/crime/2017/10/15/how-students-social-media-threats-disrupting-schools-involving-police/753349001/> (last visited January 23, 2018).

¹³ *Id.*

¹⁴ Tarpon Springs Police Department “Information-Be On the Lookout” Bulletin and May 9, 2017 Press Release (on file with the Senate Committee on Criminal Justice).

Case Law Applying Section 836.10, F.S.

In a 2016 court decision, a juvenile's disposition for a violation of s. 836.10, F.S., for posting written threats to kill or do bodily injury on Twitter¹⁵ was reversed.¹⁶ The juvenile made a series of public posts on Twitter over the span of several days threatening to "shoot up" his school.¹⁷ 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.¹⁸

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.¹⁹

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.²⁰

III. Effect of Proposed Changes:

The bill deletes the current statutory requirement that prohibits any person who writes or composes and sends a letter, inscribed communication, or electronic communication to with a threat kill or do bodily injury to a person or any member of the person's family.

Further, the bill prohibits a person from making a threat in 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.

Section 836.10, F.S., is made applicable under circumstances where a person transmits a threat to kill or do great bodily injury to another in a more public forum than the current law contemplates.

The current second degree felony²¹ is changed by the bill to a third degree felony.²² The bill also changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense

¹⁵ "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 2009) available at <http://gnoted.com/what-is-twitter-and-how-does-it-work-beginners-guide/> (last visited January 23, 2018).

¹⁶ *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).

¹⁷ 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*, 210 So.3d 142, 143 (Fla. 2d DCA 2016).

¹⁸ *J.A.W. v. State*, 210 So.3d 142, 143 (Fla. 2d DCA 2016).

¹⁹ *J.A.W. v. State*, 210 So.3d 142 (Fla. 2d DCA 2016).

²⁰ *Id.*

²¹ A second degree felony is punishable by up to 15 years imprisonment and a \$15,000 fine.

²² A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.²³

The bill exempts the following providers from liability under s. 836.10, F.S.:

- Interactive computer service;
- Communications services;²⁴
- Commercial mobile service; or
- Information service, including but not limited to an Internet service provider or a hosting service provider, if it provides the transmission, storage or catching of electronic communications or messages of others or provides another related telecommunications, commercial mobile radio service or information service for use by another person who violates s. 836.10, F.S.

The bill specifies that the exemption is consistent with and in addition to any liability exemption under 47 U.S.C. s. 230.²⁵

The bill is effective October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ Section 921.0024, F.S.

²⁴ Section 202.11, F.S., defines communications services as the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include: information services, installation or maintenance of wiring or equipment on a customer's premises, the sale or rental of tangible personal property, the sale of advertising, including, but not limited to, directory advertising, bad check charges, late payment charges, billing and collection services, internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

²⁵ 47 U.S.C. s. 230 specifies that a provider of an interactive computer service is not treated as the publisher or speaker of any information provided by another information content provider.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

On January 8, 2018, the Criminal Justice Impact Conference (CJIC) reviewed the bill. The CJIC adopted a “positive indeterminate” estimate of the fiscal impact of the bill on prison beds, meaning that there may be an unquantifiable increase in prison beds from the bill.²⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 836.10 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Appropriations on February 27, 2018:

The committee substitute exempts providers of an interactive computer service, communications service, commercial mobile service, or information service from liability under s. 836.10, F.S.

CS by Criminal Justice on January 29, 2018:

The committee substitute:

- Changes the elements of the offense by:
 - Requiring that the threat be to kill or do *great* bodily harm to a person, not just bodily harm; and
 - Requiring that the threat be transmitted in a way that would allow another person to view it.

²⁶ E-mail from the Office of Economics and Demographics Research staff, January 23, 2018 (on file with Senate Committee on Criminal Justice).

- Changes the statutory degree of the offense. The offense is decreased from a second degree felony to a third degree felony.
- Changes the offense from a Level 6 to a Level 4 in the Criminal Punishment Code Offense Severity Ranking Chart, which decreases the offense's sentencing points from 36 points to 22 points.

B. Amendments:

None.

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