

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/CS/SB 174

INTRODUCER: Appropriations Committee on Criminal and Civil Justice; Criminal Justice Committee;
and Senator Polsky

SUBJECT: Protection of Specified Personnel

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Stokes</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Atchley</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 174 amends s. 836.12, F.S., to:

- Add justices, judicial assistants, clerk of the circuit court, clerk of the circuit court personnel, and a family member of any of these officials or professionals, to the list of persons protected from threats of serious bodily harm or death under s. 836.12(2), F.S.;
- Require a violation of s. 836.12(2), F.S., to be committed “knowingly and willfully”; and
- Create a new first-degree misdemeanor offense in s. 836.12(3), F.S., to prohibit a person from knowingly and willfully harassing a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, a justice, a judicial assistant, a clerk of the circuit court, clerk of the circuit court personnel, or an elected official, with the intent to intimidate or coerce such a person to perform or refrain from performing a lawful duty.

The bill also defines the term “judicial assistant.”

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill will have a positive insignificant impact on state prison beds and jail beds (an increase of ten or fewer beds). See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2023.

II. Present Situation:

Threat Against a Law Enforcement Officer and Others –Section 836.12, F.S.

Section 836.12, F.S., provides that it is first degree misdemeanor¹ for any person to threaten a law enforcement officer,² a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member³ of any such person, with death or serious bodily harm.⁴

A person who commits a second or subsequent violation of s. 836.12, F.S., commits a third-degree felony.⁵

III. Effect of Proposed Changes:

The bill amends s. 836.12, F.S., to:

- Add justice, judicial assistant, clerk of the circuit court, clerk of the circuit court personnel, and a family member of any of these officials or professionals, to the list of persons protected from threats of serious bodily harm or death under s. 836.12(2), F.S.;
- Require a violation of s. 836.12(2), F.S., to be committed “knowingly and willfully”; and
- Create a new first-degree misdemeanor offense in s. 836.12(3), F.S., to prohibit a person from knowingly and willfully harassing a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, a justice, a judicial assistant, a clerk of the circuit court, clerk of the circuit court personnel, or an elected official, with the intent to intimidate or coerce such a person to perform or refrain from performing a lawful duty.

The bill defines a “judicial assistant” as a court employee assigned to the office of a specific judge or justice responsible for providing administrative, secretarial, and clerical support to the assigned judge or justice.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

¹ A first-degree misdemeanor is punishable by not more than one year in county jail and fine not exceeding \$1,000. Sections 775.082 and 775.083, F.S.

² “Law enforcement officer” means a law enforcement officer as defined in s. 943.10, F.S.; or a federal law enforcement officer as defined in s. 901.1505, F.S. Section 836.12(1)(b), F.S.

³ “Family member” means an individual related to another individual by blood or marriage; or an individual who stands in loco parentis to another individual. Section 836.12(1)(a), F.S.

⁴ Section 836.12(2), F.S.

⁵ Section 836.12(3), F.S. A third-degree felony is generally punishable by not more than five years in state prison and a fine not exceeding \$5,000. Sections 775.082 and 775.083, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has determined that the bill will have a positive insignificant prison bed impact (an increase of ten or fewer beds).

Under current s. 836.12(2), F.S., a second or subsequent violation of that subsection would be a third degree felony.⁶ Since the bill amends s. 836.12(2), F.S., to include certain threats to judges, judicial assistants, and their families, it has the potential to not only expand the number of misdemeanor violations of subsection (2), but also repeat violations of subsection (2), which would trigger third degree felony penalties. However, at present, the impact on state prison beds is expected to be insignificant. There have been no new commitments to prison under s. 836.12, F.S., in the last four fiscal years.

VI. Technical Deficiencies:

None.

⁶ The third degree felony is not ranked in the Criminal Punishment Code offense severity ranking level chart (s. 921.0022, F.S.), and therefore, the offense defaults to a level 1 third degree felony under s. 921.0023, F.S.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 836.12 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 Committee on Criminal and Civil Justice on April 18, 2023:

The committee substitute adds a clerk of the circuit court and clerk of the circuit court personnel to the list of officials or professionals protected from threats of serious bodily harm or death under s. 836.12(2), F.S., and from knowing and willful harassment under s. 836.12(3), F.S.

CS by Criminal Justice on April 4, 2023:

The committee substitute:

- Removes original bill language amending s. 365.16, F.S. (obscene or harassing telephone calls);
- Amends s. 836.12, F.S., to punish threats of serious bodily harm to justices, judicial assistants, and their family members;
- Requires the threat violation to be committed “knowingly and willfully”;
- Creates a new first-degree misdemeanor offense to prohibit a person from knowingly and willfully harassing a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, a justice, a judicial assistant, or an elected official, with the intent to intimidate or coerce such a person to perform or refrain from performing a lawful duty; and
- Defines the term “judicial assistant.”

B. Amendments:

None.