

**HOUSE OF REPRESENTATIVES**  
**FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/CS/HB 165	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Written Threats to Conduct Mass Shootings or Acts of Terrorism	94	Y's 7	N's
<b>SPONSOR(S):</b>	McClain and others	<b>GOVERNOR'S ACTION:</b> Approved		
<b>COMPANION BILLS:</b>	CS/CS/SB 310			

**SUMMARY ANALYSIS**

CS/CS/CS/HB 165 passed the House on March 5, 2018. The bill was amended in the Senate on March 9, 2018, and returned to the House. The House concurred in the Senate amendments and subsequently passed the bill as amended on March 9, 2018.

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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/CS/HB 165 amends the statute to include the crime of a threat to conduct a mass shooting or act of terrorism. The bill makes it a second-degree felony for a person to make such a threat in writing or other record, including an electronic record. To violate this section, a person must:

- Write or compose a threat to conduct a mass shooting or act of terrorism; and
- Post or transmit the threat in a manner to allow any other person to view it.

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

The bill was approved by the Governor on March 30, 2018, ch. 2018-128 L.O.F., and will become effective on July 1, 2018.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0165z1.CRJ

DATE: April 3, 2018

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF 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 as 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 definitive 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-state watchdog group who reported the threats to local police. Local police later contacted school officials informing them of the threats.

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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 March 14, 2018).

<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 March 14, 2018).

<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(3)(d) and 775.083(1)(b), 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 March 14, 2018).

<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 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.*

On appeal, 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/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 conduct a mass shooting or act of terrorism; and
- Posting or transmitting the threat in any manner that would allow any other person to view the threat.

The bill does not require that the threat to conduct the mass shooting or act of terror be sent to any particular person or member of a person's family, unlike a threat to kill or do bodily injury. Written threats to conduct a mass shooting or act of terrorism 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 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 also amends the Criminal Punishment Code used in a defendant's sentencing to include the additional offense against threats to conduct mass shootings or acts of terrorism.

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

- Interactive computer service;
- Communications service;<sup>14</sup>
- Commercial mobile service; or
- Information service, including but not limited to an internet service provider or 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.

The bill specifies that the exemption is consistent with, and in addition to, any liability exemption under 47 U.S.C. § 230.<sup>15</sup> This ensures that the above providers will not face any civil or criminal liability for performing usual business activities should the user of the service violate s. 836.10, F.S.

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

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<sup>13</sup> Id.

<sup>14</sup> S. 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.

<sup>15</sup> 47 U.S.C. § 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.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant increase in the need for prison beds due to the criminalization of a new offense.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.