

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 67 Protection of Specified Personnel

SPONSOR(S): Criminal Justice Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Leshko	Hall

SUMMARY ANALYSIS

Currently under s. 836.12, F.S., any person who threatens a law enforcement officer, a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member of any such person, with death or serious bodily harm commits a first-degree misdemeanor.

Section 838.021, F.S., provides that it is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.

It is a second-degree felony if the offender unlawfully harms such a public servant or any person with whose welfare the public servant is interested and a third-degree felony if the offender threatens to unlawfully harm such a person.

PCS for HB 67 amends s. 836.12, F.S., to:

- Include justices, judicial assistants, and family members of justices and judicial assistants, to the list of persons protected from threats of serious bodily harm or death;
- Require a violation to be committed “knowingly and willfully”; and
- Create a new first-degree misdemeanor offense to prohibit a person from knowingly and willfully threatening to use force or violence against 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.

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 may have a positive indeterminate impact on jail beds by expanding the scope of personnel protected from threats and by creating a new misdemeanor offense for threats of force or violence against specified personnel, which may result in more jail admissions.

The bill provides an effective date of October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Threats Against Specified Personnel

Under s. 836.12, F.S., any person who threatens a law enforcement officer,¹ a state attorney, an assistant state attorney, a firefighter, a judge, or an elected official, or a family member² of any such person, with death or serious bodily harm commits a first-degree misdemeanor.³

A person who commits a second or subsequent violation of s. 836.12, F.S., commits a third-degree felony.⁴

Threats Against a Public Servant

Under s. 838.021, F.S., it is unlawful to harm or threaten to harm any public servant, his or her immediate family, or any other person with whose welfare the public servant is interested, with the intent to:

- Influence the performance of any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.
- Cause or induce the public servant to use or exert any influence on another public servant regarding any act or omission that the person believes to be, or that the public servant represents as being, within the official discretion of the public servant, in violation of a public duty, or in performance of a public duty.⁵

It is a second-degree felony⁶ if the offender unlawfully harms such a public servant or any person with whose welfare the public servant is interested and a third-degree felony if the offender threatens to unlawfully harm such a person.⁷

Written or Electronic Threats to Kill

Section 836.10, F.S., prohibits, as a second-degree felony, the sending, posting, or transmitting, or procuring the sending, posting, or transmission of, a writing or other record, including an electronic record,⁸ in any manner in which it may be viewed by another person, if the writing or record contains a threat to kill or do bodily injury to another person or to conduct a mass shooting or an act of terrorism.⁹

Obscene or Harassing Telephone Calls

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

² "Family member" means: 1) an individual related to another individual by blood or marriage; or 2) an individual who stands in loco parentis to another individual. S. 836.12(1)(a), F.S.

³ A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a \$1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.

⁴ S. 836.12(3), F.S.; A third-degree felony is punishable by a term of imprisonment not exceeding five years and a \$5,000 fine. Ss. 775.082(3)(e) and 775.083(1)(c), F.S.

⁵ S. 838.021(1), F.S.

⁶ A second degree felony is punishable by a term of imprisonment not exceeding 15 years and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁷ S. 838.021(3)(a-b), F.S.

⁸ "Electronic record" means any record created, modified, archived, received, or distributed electronically which contains any combination of text, graphics, video, audio, or pictorial represented in digital form, but does not include a telephone call. S. 836.10(1), F.S.

⁹ S. 836.10(2), F.S.

Under s. 365.16, F.S., it is a second-degree misdemeanor¹⁰ to:

- Make a telephone call to a location at which the person receiving the call has a reasonable expectation of privacy, and during such call make any comment, request, suggestion, or proposal which is obscene, lewd, lascivious, filthy, vulgar, or indecent, and by such call or such language intend to offend, annoy, abuse, threaten, or harass any person at the called number.
- Make a telephone call, whether or not conversation ensues, without disclosing your identity and with intent to annoy, abuse, threaten, or harass any person at the called number.
- Make or cause the telephone of another to repeatedly or continuously ring, with intent to harass any person at the called number.
- Make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number.¹¹

Telephone calls made in good faith in the ordinary course of business or commerce are exempt from these provisions.¹²

Effect of Proposed Changes

PCS for HB 67 amends s. 836.12, F.S., to:

- Include justices, judicial assistants, and family members of justices and judicial assistants, to the list of persons protected from threats of serious bodily harm or death;
- Require a violation to be committed “knowingly and willfully”; and
- Create a new first-degree misdemeanor offense to prohibit a person from knowingly and willfully threatening to use force or violence against 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.

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 provides an effective date of October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 836.12, F.S., relating to threats.

Section 2: Provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

¹⁰ A second-degree misdemeanor is punishable by a term of imprisonment not exceeding 60 days and a \$500 fine. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.

¹¹ S. 365.16(1), F.S.

¹² S. 365.16(5), F.S.

2. Expenditures:

The bill may have a positive indeterminate impact on jail beds by expanding the scope of personnel protected from threats and by creating a new misdemeanor offense for threats of force or violence against specified personnel, which may result in more jail admissions.

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. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

PCS for HB 67 may implicate the First Amendment. The First Amendment of the U.S. Constitution guarantees that "Congress shall make no law ... abridging the freedom of speech."¹³ The rights guaranteed by the First Amendment apply with equal force to state governments through the due process clause of the Fourteenth Amendment.¹⁴

The U.S. Supreme Court has emphasized that the First Amendment right to free speech includes a right to make hate speech, holding recently as a "bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend."¹⁵ However, the First Amendment does not protect "true threats," and the government may restrict such speech¹⁶ to "protect[] individuals from the fear of violence" and "from the disruption that fear engenders," in addition to protecting persons "from the possibility that the threatened violence will occur."¹⁷

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹³ U.S. Const., amend. I.

¹⁴ U.S. Const. amend. XIV. See also Art. I, Fla. Const.

¹⁵ *Matal v. Tam*, 137 S.Ct. 1744, 1751 (2017).

¹⁶ *Virginia v. Black*, 538 U.S. 343, 344 (2003) quoting *Watts v. United States*, 394 U.S. 705, 708 (1969).

¹⁷ *Id.* See also *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 388 (1992).