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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 110                      **Hearing Date:** April 14, 2015  
**Author:** Fuller  
**Version:** February 18, 2015  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** LT

**Subject:** *Threats: Schools*

### HISTORY

**Source:** Bakersfield Police Department

**Prior Legislation:** None known

**Support:** Kern County District Attorney's Office; Kern County Superintendent of Schools; California State Sheriffs' Association; Bakersfield Police Department

**Opposition:** Legal Services for Prisoners with Children; Public Counsel; American Civil Liberties Union of California

### PURPOSE

***The purpose of this bill is to enact a new misdemeanor for threatening unlawful violence on a school campus which creates disruption at that school, as specified..***

*Existing law* provides that "any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison." (Penal Code § 422).

*Existing law* generally provides that every student or employee who, after a hearing, has been suspended or dismissed from a school as specified, and who willfully and knowingly enters upon the campus or facility to which he or she has been denied access is guilty of a misdemeanor. (Penal Code § 626.2)

*This bill* would enact a new crime to provide that "each person who, by any means, including, but not limited to, by means of an electronic act, as specified, threatens unlawful violence to occur upon the grounds of a school and that threat creates a disruption at the school, shall be punished by imprisonment in a county jail for a term not exceeding one year."

*This bill* would define “disruption” to mean an act likely to interfere with peaceful activities of the campus or facility.”

*This bill* would provide that its provisions “not preclude or prohibit prosecution under any other law.”

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”( Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Stated Need for This Bill

The author states:

The threat of violence in California schools and colleges through social media or other electronic communication is a problem. These threats not only instill fear and force the cancellation of classes and building closures, but they can cost school districts considerable funds. This includes the cost to investigate and prosecute perpetrators, to hire additional safety personnel to observe student activities and websites, and to purchase surveillance equipment to monitor non-classroom areas. The impact expands beyond the incidence, and hinders the learning environment.

Roughly 30% of violent threats made against schools were delivered through social media, email, text messaging and other electronic means from August 2013 to January 2014. It is believed this percentage has increased and will continue to rise. These electronic threats include school bomb threats, shooting threats, hoaxes, and acts of violence.

...

There was a death threat made via a social media site towards Liberty High School [Bakersfield] on October 7, 2014 from a student. This threat resulted in nearly 1,000 students either leaving early or not reporting to school. The police department followed their normal investigative process, located the student, and obtained a search warrant for the home, but when it came time to arrest the student they were only able to hold him on a public nuisance charge. The reality is that the Penal Code only allows for a charge to be leveled if the threat is made on the school campus grounds.

### 2. Background: School Threats

Recent media reports have described numerous incidents involving school threats. For example, in San Diego:

...there were 5 percent more suspensions and expulsions in San Diego County related to making terrorist threats in the 2013-14 school year than in the previous school year, and 35 percent more than in the 2011-12 school year. Threats typically surface on social media or are made via phone or email. Once school officials learn of it, police are called in to investigate, and a school might get locked down, with everyone on campus kept behind locked doors until the coast is clear. That could take hours.

Students from high school campuses in Oceanside, San Diego, El Cajon and San Marcos, have been arrested on suspicion of using the app to threaten schools.

The CEO, Jonathan Lucas, said recent changes to the app make it “very clear” that threats of violence and bullying won’t be tolerated. He said users are asked to carefully consider the contents of their posts and are even shown their IP addresses. He said the company has been cooperating with all law enforcement

investigations and has a quick process in place to help investigators locate users who commit crimes. (Winkley, Lyndsay, and Pat Maio. "Online Schools Threats Up; Officials Crack down." *U-T San Diego*. N.p., 22 Mar. 2015. Web. 07 Apr. 2015.)

Similarly, in Los Angeles, an 11<sup>th</sup> grade student was arrested for making threats through the social media app, Burnbook, against a Los Angeles county high school. Investigators were informed that the student had published the threat online and was taken into custody the following day. He was charged with making criminal threats after he confessed to threatening to bring a weapon to school. The student told deputies that he was making jokes. ("Student Arrested after Social Media Threats against School." *Student Arrested following Threats on Social Media against Los Angeles County School*. The Associated Press, 12 Mar. 2015. Web. 07 Apr. 2015.)

Based on these reports, it appears current law already addresses these kinds of threats. Members may wish to discuss why current law is not adequate, and how this bill would enhance campus safety against credible threats.

### **3. First Amendment Issues—Free Speech and Limits on Threatening Speech**

Courts have long held that speech concerning public issues is entitled to great protection under the First Amendment. (*Burson v. Freeman* (1992) 504 U.S. 191.) The California Constitution also protects free speech. (Cal. Const. Art. I, § 2.) The First Amendment protects the free trade in ideas. “[T]he government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” (*Texas v. Johnson* (1989) 491 U.S. 397, 414.)

The First Amendment is not absolute. “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem.” (*Chaplinsky v. New Hampshire* (1942) 315 U.S. 568, 571-572.) The First Amendment permits “restrictions upon the content of speech in a few limited areas, which are ‘of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality’.” (*R. A. V. v. City of St. Paul* (1992) 505 U.S. 377, 382-383. quoting *Chaplinsky* at p. 572). In particular, expressive conduct intended to intimidate is not protected by the First Amendment. (*Virginia v. Black* (2003) 538 U.S. 343.)

A specific form of unprotected, intimidating speech is called “true threats” in First Amendment jurisprudence. “A threat is an expression of an intention to inflict evil, injury or damage on another. Alleged threats should be considered in light of their entire factual context, including the surrounding events and reactions of the listeners. ... A true threat, that is one where a reasonable person would foresee that the listener will believe he will be subjected to physical violence upon his person, is unprotected by the First Amendment.” (*Planned Parenthood of the Columbia/Willamette v. American Coalition of Life Activists* (2002) 290 F.3<sup>rd</sup> 1058, 1077.)

WOULD THIS BILL BE CONSTITUTIONAL?

#### 4. Related Bill

SB 456 (Block), also scheduled to be heard on the same hearing date as this bill, similarly addresses school threats (pertaining to gun violence specifically) and raises concerns about 1<sup>st</sup> Amendment rights. The author of SB 456 is proposing amendments in Committee to tighten that bill's language with respect to what would constitute a criminal threat.

The author and Committee members may wish to discuss whether the "true threat" language being amended into SB 456 might be appropriate for this bill.

In addition, members may wish to discuss how the provisions of this bill, which would apply to any threat of unlawful violence, would relate to SB 456, which applies to a more narrow threat, and how these measures could be harmonized.

#### 5. Opposition

Public Counsel, which opposes this bill, states in part:

... SB 110 as written is overly broad and vague. The bill criminalizes threats that "creates a disruption at school," and clarifies only that disruption is "an act likely to interfere with peaceful activities of the campus or facility." This definition does not provide meaningful guidance or notice of the prohibited conduct, and does not require that there have been any actual interference with school activities, only that such a result is "likely." Further, although the bill's impetus is to address threats made through social media or other electronic communications, it instead broadly encompasses actions taken through, "any means, including but not limited to, by means of an electronic act."

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