

SENATE BILL REPORT

SB 6307

As Reported by Senate Committee On:
Law & Justice, February 6, 2020

Title: An act relating to communicating mass violence threats.

Brief Description: Communicating mass violence threats.

Sponsors: Senators Liias, Kuderer, Dhingra, Saldaña, Pedersen, Frockt and Wilson, C.

Brief History:

Committee Activity: Law & Justice: 2/03/20, 2/06/20 [DP, DNP].

Brief Summary of Bill

- Creates the offense of communicating a threat of mass violence as a class C felony ranked at level IV on the sentencing grid.
- Authorizes responding law enforcement officers to seize firearms, other dangerous weapons, ammunition, and any concealed carry permit with probable cause when there are reasonable grounds to believe they were used, or threatened to be used in the offense or in plain sight or discovered during a lawful search.
- Immunizes public officials, employees, and agencies from liability for seizing or not seizing firearms, dangerous weapons, or ammunition unless they were acting with gross negligence or in bad faith.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: Do not pass.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: A number of mass casualty attacks occurred in 2019 across the U.S. Four of these events met the FBI's definition of a mass murder; an incident in which at least four people are killed. A drive-by shooting spree in Midland, Texas left seven people killed and 24 wounded. A shooting in the historic district in Dayton, Ohio on August 4th left 9 people killed and 27 injured. The day before, on August 3rd, a shooting in an El Paso, Texas Walmart left 22 people killed and 24 wounded. The El Paso incident was the deadliest shooting of 2019. A shooting on May 31st in Virginia Beach, Virginia by a former city employee killed 12 people and wounded 4.

A threat of mass violence can foreshadow a violent event. Approximately 40 percent of mass public shooters make threats prior to their attack, according to one study. The majority of threats were verbal, 52 percent followed by 36 percent written, and 21 percent in other forms. One approach states use to prevent such events are laws allowing law enforcement or family members to petition courts to remove weapons from people who might be dangerous and prevent them from purchasing weapons for up to a year. These are sometimes called "red flag" laws. Approximately 17 states and Washington, D.C. have passed such laws, including Washington State.

Criminalizing threats is another policy approach. Although the elements of the crime vary among states, all 50 states recognize a crime of knowingly threatening bodily harm to one or more persons immediately or in the future. These laws may raise First Amendment freedom of speech issues depending on the crime's circumstances. Some threat crimes are directed to particular targets, for example threatening a police officer or a public official. Others focus on the threatened use of a specific weapon, for example making a bomb threat. It is a federal offense to "transmit in interstate or foreign commerce any communication containing...any threat to injure the person of another." In Washington, harassment is the offense related to a threat against a person. Under state statute, a person is guilty of harassment if without lawful authority, the person knowingly threatens:

- to cause bodily injury immediately or in the future to the person threatened or to any other person;
- to cause physical damage to the property of a person other than the actor; or
- to subject the person threatened or any other person to physical confinement or restraint; or
- maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his or her physical or mental health or safety.

The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to any other form of communication or conduct, the sending of an electronic communication.

A person who harasses another is guilty of a gross misdemeanor with three exceptions. The harassment is a class C felony when (1) the previous harassment convictions regarding the same victim or their family or a protective order violation; (2) the threat is to kill the threatened person or anyone else; or (3) the threat is against a criminal justice participant during official duties. It is not harassment of a criminal justice person if it is clear that the person threatening the criminal justice official has no present or future ability to carry out the threat.

In a small number of states, communicating a threat of mass violence is a crime. While not a complete list, North Carolina recently created the crime of communicating a threat of mass violence at schools and places of religious worship. Maryland's crime of communicating a threat of mass violence requires a threat to five or more people or a threat that results in a lockdown or evacuation of the threatened location. Florida has a threat of mass violence crime, but the threat must be in writing, including an electronic communication.

Summary of Bill: A person commits the class C felony offense of communicating a threat of mass violence by:

- knowingly threatening to commit an act of mass violence on educational property, at school sponsored activities, a place of religious worship, or at a current or former workplace of the person issuing the threat;
- making the threat in writing, verbally, or through any means of communication including electronic communication;
- two or more persons in the threatened group receive, read, or hear the threat and are placed in reasonable fear that the threat will be carried out or the threat causes lockdown of the threatened location; and
- a reasonable criminal justice participant would believe the threatening person has present or future ability to carry out the threat.

The offense may be deemed committed at the place where the threats were made, received, or where the threat's consequences occurred. A peace officer responding to a call regarding a threat of mass violence, who has probable cause to believe that a crime has been committed, exercises arrest powers as provided in law and must:

- seize all firearms and ammunition when the officer has reasonable grounds to believe they were used or threatened to be used in the commission of the offense;
- seize all firearms in plain sight or discovered during a lawful search;
- request consent to take temporary custody of any other firearms and ammunition the arrested person can access until a judicial officer hears the matter; and
- document all information about firearms and concealed pistol licenses in an incident report.

Public officials, employees, and agencies or local government units are immune from civil liability for damages from seizing or not seizing a firearm, dangerous weapons, or ammunition unless they acted with gross negligence or in bad faith. Prosecutors must request a defendant have no firearms possession or access, as a condition of pretrial release. The prosecutor must also ask the court to verify that all firearms the defendant owns, possesses, or may access have been turned over to law enforcement prior to release. If a defendant is subject to an order to surrender weapons or an extreme risk protection order at the time they communicated the threat of mass violence, conviction of the offense of communicating a threat of mass violence constitutes a violation of the order to surrender weapons or extreme risk protection order.

For purposes of the offense, mass violence means physical injury that a reasonable person would conclude could lead to permanent injury, including mental or emotional injury, or death to two or more people if carried out. Harassment may include communication of a threat of mass violence. Unlawful possession of a firearm includes possession being under an order requiring the person to surrender all firearms and prohibiting the person from

accessing, obtaining, or possessing firearms after a previous conviction or finding of not guilty by reason of insanity in this state or elsewhere of communicating a threat of mass violence.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute: PRO: Having lost a family member in a mass shooting event in California, my effort is to support legislation that may prevent mass shootings. In my niece's case, the shooter showed many signs that warned of potential violence. In the days before the shooting, his family asked law enforcement to perform a wellness check, but there was nothing the police could do to address the threatened violence. Extreme Risk Protection Orders are not enough. This bill may have prevented my niece's death at the hands of a shooter. Mass violence is at the forefront in our state from shootings in school settings to the very recent shooting in downtown Seattle. Taking action by holding persons accountable for causing fear in the public is important. Threats can expose potential for future violence, but it also has serious effects on those who are threatened. This bill is a proactive effort to prevent mass violence by filling a gap in the current criminal statutes; by making a true threat to a group of people a distinct crime. Now active shooter drills and metal detectors at sports events are part of reality in our state. The current law makes a threat by one person against another a crime, but we have no crime for a threat of mass violence. Our modern reality is that these threats create fear in our communities. This bill gives authority to investigate and report, but it does not create an affirmative obligation for the public to report threats of mass violence. Hate and gun violence are inextricably linked. Hate crimes are on the rise across the country. Washington is forth in the nation for hate crimes behind only California, New York, and New Jersey. The Internet has become a place of radicalization. In 2006, an individual came into the Seattle Jewish Federation building in Seattle and shot six women; one fatally, in what the police classified as a hate crime. There have been other threatened mass shootings in the Seattle vicinity thwarted by law enforcement, but law enforcement needs more tools to prevent these attacks. Threats to commit mass violence have real effects, especially on students. Students are adept at hiding their identities on social media allowing their threats to be anonymous. Those who go on to commit violence often show signs in their prior school behavior. I am a person of the post-Columbine age; that means I have never gone to school without the fear of mass violence. In 2012, a mass shooting took place in a gurdwara—Sikh temple—in Oak Creek, Wisconsin in which a shooter fatally shot six people and wounded four others. Those who wear turbans, or other visible signs of their religion, are often the target of violent, hateful words. My family fears for its safety in their business on the anniversary of the 9/11 attack. This bill can help prevent tragedies before it is too late. We do think there is a gap in current law, and we are concerned about section 1(c) which requires victims to know about the threat. How would a law enforcement officer know that those who are threatened know about the threat?

CON: This bill criminalizes something that is already criminal. There are crimes of harassment, telephone harassment, stalking, cyberstalking, and bomb threats. Law enforcement could use these existing statutes to serve the purpose; or the purpose can be served by seeking an extreme risk protection order. This new crime is not needed.

Persons Testifying: PRO: Kim Wyatt, King County Prosecuting Attorney's Office; Pat Lavin, citizen; Jane Weiss, citizen; Miri Cypers, citizen; Jennifer Dolan-Waldman, citizen; Gurkaran Waraich, citizen; James McMahan, Washington Association of Sheriffs and Police Chiefs.

CON: Vitaliy Kerchen, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

Persons Signed In To Testify But Not Testifying: No one.