

HOUSE BILL REPORT

SHB 2632

As Passed Legislature

Title: An act relating to false reporting of a crime or emergency.

Brief Description: Concerning false reporting of a crime or emergency.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Valdez, Griffey, Ryu, Pellicciotti, Pollet, Orwall, Gregerson, Goodman, Irwin, Ramos, Slatter, Entenman, Davis and Macri).

Brief History:

Committee Activity:

Public Safety: 1/28/20, 2/6/20 [DPS].

Floor Activity:

Passed House: 2/12/20, 97-0.

Senate Amended.

Passed Senate: 3/3/20, 49-0.

House Refused to Concur.

Senate Receded.

Senate Amended.

Passed Senate: 3/10/20, 49-0.

Brief Summary of Substitute Bill

- Modifies the crime of False Reporting, and elevates the crime to a felony if it involves certain conduct and results in death or bodily harm.
- Creates a civil cause of action for a victim to recover damages associated with False Reporting.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

Staff: Emily Williams (786-7291) and Kelly Leonard (786-7147).

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:

Crime of False Reporting.

False Reporting is a gross misdemeanor. A person is guilty of False Reporting if he or she:

- initiated or circulated a false report or warning of an alleged occurrence or impeding occurrence of a fire, explosion, crime, catastrophe, or emergency;
- knew that the information was false; and
- knew that the false report was likely to cause an evacuation of a building, place of assembly, or transportation facility, or cause public inconvenience or alarm.

Classification of Crimes and Fines.

Crimes are classified as misdemeanors, gross misdemeanors, or felonies. The classification of a crime generally determines the maximum term of confinement (prison or jail) and/or fine for an offense. For each classification, the maximum terms of confinement and maximum fines are as follows:

<u>Classification</u>	<u>Maximum Confinement</u>	<u>Maximum Fine</u>
Misdemeanor	90 days	\$1,000
Gross Misdemeanor	364 days	\$5,000
Class C Felony	5 years	\$10,000
Class B Felony	10 years	\$20,000
Class A Felony	Life	\$50,000

When a person is convicted of a felony, the Sentencing Reform Act applies and determines a specific range of confinement within the statutory maximum. Ranges are determined by a sentencing grid. The sentencing grid provides a standard range of months for the sentence, based on both the severity, or "seriousness level," of the offense and the convicted person's "offender score," which is based on the offender's criminal history. Seriousness levels range from I to XVI, and offender scores can range from zero to nine or more points. A higher seriousness level or offender score results in a longer sentence.

Juvenile Diversion.

When a juvenile commits a crime offense, a prosecutor may seek a diversion agreement in lieu of prosecution. A diversion agreement is a contract where the juvenile agrees to certain conditions. These conditions could include, for example, counseling and restitution. If a juvenile does not complete the diversion agreement, a prosecutor may file a criminal complaint. Prosecutors have broad discretion to enter into diversion agreements, with some exceptions.

Joint and Several Liability.

In civil cases where multiple parties are at fault, fault is apportioned by percentage by the trier of fact. For most tort cases in Washington, each defendant is only responsible for his or her own share of the damages. In some cases, multiple defendants may be "jointly and severally" liable for the whole of the defendant's claim. This means that any one defendant may be required to pay all the damages, not just their portion. The defendant may seek contribution from other responsible defendants for their share of the damages. Joint and several liability applies when the tort is intentional.

Summary of Substitute Bill:

The crime of False Reporting is modified and made a third-degree offense. The crime of False Reporting in the first and second degree are created and apply when the offense involves additional conduct and harm.

Crime of False Reporting.

A person commits False Reporting if the person:

- initiated or circulated a false report or warning of an alleged occurrence or impeding occurrence;
- knew that the information that they reported, circulated, or conveyed was false; and
- knew that the false report was likely to cause: the evacuation of a building, place of assembly, or transportation facility; public inconvenience or alarm; or an emergency response.

A person is guilty of False Reporting in the first degree if the report caused an emergency response, the report was made with reckless disregard for the safety of others, and death is sustained by any person as a proximate result of the emergency response. The first-degree offense is a class B felony and a seriousness level VII offense.

A person is guilty of False Reporting in the second degree if the report caused an emergency response, was made with reckless disregard for the safety of others, and substantial bodily harm is sustained by any person as a proximate result of the emergency response. The second-degree offense is a class C felony and seriousness level III offense.

A person is guilty of False Reporting in the third degree if he or she commits false reporting under circumstances not constituting False Reporting in the first or second degree. False Reporting in the third degree is a gross misdemeanor.

"Emergency response" means any action to protect life, health, or property by: a peace officer or law enforcement agency; an agency that provides fire, rescue, or emergency medical services; or a private not-for-profit organization that provides fire, rescue, or emergency medical services.

False Reporting is deemed to have been committed:

- at the place from which the false report was made;
- at the place where the false report was received by law enforcement; or
- at the place where an evacuation, public inconvenience or alarm, or emergency response occurred.

Juvenile Diversion.

Limitations are established for diverting False Reporting offenses. If a juvenile commits False Reporting in any degree and it is his or her first violation, then the prosecutor may divert the case.

Civil Liability for False Reporting.

An individual who is a victim of False Reporting may bring a civil action against the person who committed the offense or against any person who knowingly benefits, financially or by

receiving anything of value, from participation in a venture that the person knew, or should have known, has engaged in False Reporting. The individual may recover damages and any other appropriate relief, including reasonable attorneys' fees. Joint and several liability applies to all people found civilly liable in a suit brought by the victim.

If a person is convicted of false reporting in any degree, he or she is liable for the reasonable costs of the emergency response incurred by the public agency.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington needs to be a leader in this issue. There has been a surge in hate crimes in Washington. There is a growing trend of online hate crimes that target marginalized groups. Swatting is a malicious crime that emerged in the past 10 years. Swatting is a 911 hoax typically involving a false report of hostages, gun fire, or other violence made with the goal of sending first responders to the target's home or place of work. The goal is to weaponize a 911 response to harass and intimidate innocent people. Swatting has moved beyond the online gaming community and now affects our communities and neighborhoods. It is important to start looking at this cruel act of swatting that is meant to harass and intimidate innocent individuals. Seattle created an anti-swatting registry to combat this crime so that law enforcement can identify when an emergency call is not real. But technology is developing quickly and people who do this are becoming more advanced. In many cases people are not brought to justice because they hide behind the anonymity of the Internet.

Swatting weaponizes the 911 system that is supposed to help people. Police are trained to respond quickly when they get a report that there is an active shooter. They send a heightened response and arrive on the scene with guns drawn. Swatting causes trauma, it breeds distrust of police in the community, and wastes time and money. These are not children's pranks, but malicious crimes. If this is a felony, then more resources can go into investigating and catching people who commit the crime of False Reporting.

There are eight states that have taken action on this issue. It is time for Washington to do the same. In Seattle, in 2017 there were eight instances of swatting, over the last two years there have been 63 incidents. The law does not protect victims of swatting because the misdemeanor of False Reporting does not capture the seriousness of these acts. This is a serious crime that causes trauma to the victims and breeds fear and distrust. This bill is supported by a broad coalition and it empowers victims. The seriousness levels established in this bill match up well with other crimes in those categories.

(Opposed) None.

(Other) While this bill is well intended, increasing punishments will not be effective and may do more harm than good. Laws expanding the scope of criminal penalties almost always disproportionately impact people of color and add fuel to the fire of mass incarceration. A better approach would be to focus on police militarization, data collection, training, and accountability. Some police departments, like Seattle, are already taking successful action that we support. Seattle's approach reinforces the benefit of law enforcement responding to every situation with a cool headed approach and looking to deescalate a situation to avoid unnecessary tragedies.

Persons Testifying: (In support) Representative Valdez, prime sponsor; Miri Cypers, Anti-Defamation League; Sean Whitcomb, Seattle Police Department; Monisha Harrell, Equal Rights Washington; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Roxana Gomez, American Civil Liberties Union of Washington.

Persons Signed In To Testify But Not Testifying: None.