

SENATE BILL REPORT

SB 6295

As of February 3, 2020

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

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

Sponsors: Senators Salomon, Pedersen, Carlyle, Kuderer, Wilson, C., Randall and Nguyen.

Brief History:

Committee Activity: Law & Justice: 2/03/20.

Brief Summary of Bill

- Amends the crime of false reporting and creates new crimes for false reporting in the first and second degree when false reporting leads to substantial bodily harm or death.
- Clarifies a person who commits false reporting may be liable to the public agency for the costs of any emergency response and to the victim for damages sustained as a result of the false report.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: A person is guilty of false reporting if, knowing that the information is false, the person initiates or circulates a false report or warning of a fire, explosion, crime, catastrophe, or emergency, and knowing that the false report will likely cause evacuation of a building, place of assembly, or transportation facility, or cause public inconvenience or alarm.

False reporting is a gross misdemeanor.

Swatting is generally defined as the practice of making a prank call to emergency services in an attempt to dispatch a large number of armed police officers to a particular address where they are led to believe a horrific crime has been committed, or is in progress. The practice has gained notoriety stemming from online gamers making false reports to cause an emergency response to the address of online opponents. In one such incident, law

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enforcement response led to the police shooting and death of an innocent person who happened to live at the former address of a gamer.

Summary of Bill: The Legislature intends to address the reckless act of swatting by increasing the penalties for false reporting when it leads to injury or death.

The crime of false reporting is amended and renamed false reporting in the third degree. The crimes of false reporting in the first and second degree are created.

A person is guilty of false reporting in the 3rd degree if, knowing that the information is false, the person initiates or circulates a false report knowing the false report is likely to cause an emergency response. False reporting in the 3rd degree is a gross misdemeanor.

A person is guilty of false reporting in the 2nd degree if, under circumstances constituting false reporting in the third degree, the false report is made with reckless disregard for the safety of others, and substantial bodily harm is sustained by any person as a proximate result of an emergency response. False reporting in the 2nd degree is a Class C felony, seriousness level 3.

A person is guilty of false reporting in the 1st degree, if under circumstances constituting false reporting in the third degree, the false report is made with reckless disregard for the safety of others, and death is sustained by any person as a proximate result of an emergency response. False reporting in the 1st degree is a Class B felony, seriousness level 7.

A juvenile charged with a first offense of false reporting is eligible for diversion at the discretion of the prosecutor.

A person convicted of false reporting that resulted in an emergency response may be liable to a public agency for the reasonable costs of the emergency response. A victim of false reporting may bring a civil action for damages against the person who committed the offense or participated in the offense.

Emergency response is defined as an action to protect life, health, or property by:

- a peace officer or law enforcement officer of the United States, the state, or a political subdivision of the state; and
- an agency of the United States, the state, or a political subdivision of the state, or a private not-for-profit organization, that provides fire, rescue, or emergency medical services.

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: PRO: Calling in a SWAT team to invade someone's home is highly offensive and there should be an appropriate response in the law. The incident is shocking for the victim and for everyone around them. This bill appropriately balances the consequences of swatting and harm to the victim with the seriousness level of crime.

The growth of online hate targeting marginalized groups is a growing problem. Many people experience harassment due to their identity or nationality. Online harassment is not limited to simply mean comments on someone's social media page. Swatting is the malicious act of conducting an online hoax to bring about an emergency response. The only way to address swatting is the crime of false reporting that does not address the harm caused. This bill is narrowly tailored to address this behavior.

Swatting is a malicious crime that weaponizes the 911 system. Sending police on a hoax call detracts from real crime and deliberately traumatizes innocent citizens. The perpetrator typically hides their tracks through technology and congregations on the dark web. These are terrible people working hard to target other people. In some situations these calls have resulted in death. These crimes are often not investigated because the penalty is not substantial.

Swatting is a deliberate act to mentally and physically intimidate a person where they feel safe and is a form of terrorism. Consider the idea that you may be sitting in your home with your family and have law enforcement weaponized against you. It is a crime designed to intimidate a group of people by making an example of one. The authorized punishment in law does not fit the crime. Some perpetrators of these crimes use technology to mask their system so that the call appears to come from somewhere else. We would like to see an amendment banning that technology in some way.

CON: We do not think that increasing criminal penalties will help. Criminal penalties almost always result in a disproportionate response for minorities. Mechanisms to deescalate situations before they turn into tragic situations and further training of 911 operators and police is a better approach.

OTHER: We do not believe this bill is necessary given the rare nature of this type of offense. The current statute was adopted in 1975. There is very little caselaw, which indicates this crime is not charged extensively. This may be a matter of public hysteria that does not warrant a change in law.

Persons Testifying: PRO: Senator Jesse Salomon, Prime Sponsor; Miri Cypers, Anti-Defamation League; Monisha Harrell, Board Chair, Equal Rights Washington; Sgt. Sean Whitcomb, Public Affairs Director, Seattle Police Department; James McMahan, Washington Association Sheriffs and Police Chiefs; Tobi Hill-Meyer, Co-Executive Director, Gender Justice League.

CON: Roxana Gomez, ACLU of Washington.

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

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