

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1234

INTRODUCER: Senator Boyd

SUBJECT: False Reports of Crimes

DATE: March 26, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Ravelo</u>	<u>Justin</u>	<u>JU</u>	<u>Pre-Meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1234 creates several felony offenses based on the criminal act of falsely reporting a crime.

Currently, the criminal act of falsely reporting a crime is a misdemeanor in the first degree.

Under the bill, the offense can be treated as:

- A felony of the third degree if the violation results in a response by a federal, state, district, municipal, or other “public safety agency” (a term defined in the bill) to address the reported crime, and the combined cost incurred by all responding agencies exceeds \$1,000;
- A felony of the second degree if the violation results in great bodily harm, permanent disfigurement, or permanent disability as a proximate result of lawful conduct arising out of a response; and
- A felony of the first degree if the violation results in death as a proximate result of lawful conduct arising out of a response.

Under current law, making a false report of a crime is a first degree misdemeanor, which is punishable by up to one year in county jail. In contrast: the third, second, and first degree felonies created by the bill are punishable by imprisonment by up to 5, 15, and 30 years in state prison respectively.

The bill also ranks these new felonies in the offense severity ranking chart of the Criminal Punishment Code.

The Legislature’s Office of Economic and Demographic Research preliminarily estimates that the bill will have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Swatting

“Swatting’ is a form of harassment in which attackers try to trick law enforcement into sending heavily armed strike forces – like S.W.A.T.¹ As false reporting of crimes continues to grow in popularity, it unnecessarily places law enforcement and the public in harm’s way.”² “For some attackers, this is the thrill and the purpose of swatting: to cause the victims to fear for their lives as armed police charge into their homes, often with little warning. The police often believe that they themselves are facing an armed and dangerous adversary, producing a volatile scenario that can result in property destruction, injury, and death.”³

False Reports Concerning the Commission of Any Crime

Section 817.49, F.S., provides that it is a first degree misdemeanor⁴ to willfully impart, convey or cause to be imparted or conveyed to any law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, in that no such crime had actually been committed.

Examples of Other Statutes Involving False Information or False Reporting

Provided are examples of other statutes involving false information or false reporting:

- Section 39.205(9), F.S., provides that it is a third degree felony⁵ to knowingly and willfully make a false report of child abuse, abandonment, or neglect, or advise another to make a false report.
- Section 365.172(14), F.S., provides, in part, that it is a first degree misdemeanor to use the 911 system for the purpose of making a false alarm or complaint or reporting false information that could result in the emergency response of any public safety agency.⁶
- Section 401.41(3), F.S., provides that it is a second degree misdemeanor⁷ to summon an emergency medical services⁸ vehicle when the person knows or has reason to know the services of the vehicle are not needed.

¹ A “S.W.A.T.” team is a special weapons and tactics team.

² Press Release, The Florida Senate, *Senator Boyd Files Legislation to Stop the False Reporting of Crimes* (Feb. 11, 2021), available at <https://www.flsenate.gov/Media/PressReleases/show/3911> (last visited on March 3, 2021).

³ Josh Fruhlinger, *What is swatting? Unleashing armed police against your enemies* (Nov. 25, 2020), CSO (IDG Communications, Inc.), available at <https://www.csoonline.com/article/3573381/what-is-swatting-unleashing-armed-police-against-your-enemies.html> (last visited on March 3, 2021).

⁴ A first degree misdemeanor is punishable by up to 1 year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

⁵ A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁶ It is a third degree felony if the person has been convicted four times of the unauthorized use of the 911 system and continues to engage in such unauthorized use, or if the value of the service or service charge obtained in violation of s. 365.172(14), F.S., exceeds \$100. Section 365.172(14), F.S.

⁷ A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S. A second or subsequent violation is a first degree misdemeanor. Section 401.41(3), F.S.

⁸ Emergency medical services do not appear to include law enforcement services. See s. 401.407(3), F.S. (defining “emergency medical services” in regard to emergency medical services grants).

- Section 790.163(1), F.S., provides that it is a second degree felony⁹ to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, or concerning the use of firearms in a violent manner against a person or persons.
- Section 790.164(1), F.S., provides that it is a second degree felony to make a false report, with intent to deceive, mislead, or otherwise misinform any person, concerning the placing or planting of any bomb, dynamite, other deadly explosive, or weapon of mass destruction, concerning any act of arson or other violence to property owned by the state or any political subdivision, or concerning the use of firearms in a violent manner against a person or persons.
- Section 806.101, F.S., provides that it is a first degree misdemeanor¹⁰ for a person, without reasonable cause, by outcry or the ringing of bells, or otherwise, to make or circulate, or cause to be made or circulated, a false alarm of fire.
- Section 837.05(1)(a), F.S., provides that it is a first degree misdemeanor¹¹ to knowingly give false information to a law enforcement officer concerning the alleged commission of any crime.¹²
- Section 837.05(2), F.S., provides that it a third degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a capital felony.
- Section 837.055(1), F.S., provides that it is a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.
- Section 837.055(2), F.S., provides that it is third degree felony to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation, and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death.

⁹ A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

¹⁰ A second or subsequent conviction is a third degree felony. Section 806.101, F.S.

¹¹ A second or subsequent violation is a third degree felony if the information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by an audio recording or audio recording in a video of that information, a written or recorded statement made by the person who gave that information, or another person who was present when that person gave that information to the officer and heard that information; or the information the person gave to the law enforcement officer was communicated in writing. Section 837.05(1)(b), F.S.

¹² "Perhaps the only difference between the misdemeanor offenses described in section 837.05(1) and section 817.49 is that the latter would appear to permit a conviction for indirectly providing false information to a police officer, while the former might be interpreted as requiring the defendant to directly give the information to the officer." *Boland v. State*, 893 So.2d 683, 685 (Fla. 2d DCA 2005).

Criminal Punishment Code

The Criminal Punishment Code¹³ (Code) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (levels 1-10).¹⁴ Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a level 7 or 8 drug trafficking offense. The Code calls for a nonstate prison sanction if the offender scores below 45 points, unless the sentencing judge finds that a term of imprisonment is otherwise appropriate.¹⁵ If total sentence points exceed 44 points, the lowest permissible sentence *in prison* months is calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent.¹⁶ Absent mitigation,¹⁷ the permissible sentencing range under the Code is generally the lowest permissible sentence scored up to and including the maximum penalty provided under s. 775.082, F.S.¹⁸

III. Effect of Proposed Changes:

The bill amends s. 817.49, F.S., to provide for greater punishment for willfully making a false report of a crime to a law enforcement officer¹⁹ in the following manner:

- It is a third degree felony if the violation results in a response by a federal, state, district, municipal, or other "public safety agency"²⁰ to address the reported crime, and the combined cost incurred by all responding agencies exceeds \$1,000.

¹³ Sections 921.002-921.0027, F.S. See chs. 97-194 and 98-204, L.O.F. The Code is effective for offenses committed on or after October 1, 1998.

¹⁴ Offenses are ranked either in the offense severity level ranking chart in s. 921.0022, F.S., or by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

¹⁵ Section 921.0024(2), F.S.

¹⁶ Section 921.0024, F.S. Unless otherwise noted, information on the Code is from this source.

¹⁷ The court may "mitigate" or "depart downward" from the scored lowest permissible sentence, if the court finds a mitigating circumstance. Section 921.0026, F.S., provides a list of mitigating circumstances.

¹⁸ If the scored lowest permissible sentence exceeds the maximum penalty in s. 775.082, F.S., the sentence required by the Code must be imposed. If total sentence points are greater than or equal to 363 points, the court may sentence the offender to life imprisonment. Section 921.0024(2), F.S.

¹⁹ The elements of the offense (with minor modifications in wording made by the bill) are willfully imparting, conveying, or causing to be imparted or conveyed to a law enforcement officer false information or reports concerning the alleged commission of any crime under the laws of this state, knowing such information or report to be false, when no such crime has had actually been committed.

²⁰ The bill defines "public safety agency" as a law enforcement agency, a professional or volunteer fire department, an emergency medical service, an ambulance service, or any other public entity that provides first responder services to respond to crimes, to assist victims of crimes, or to apprehend offenders.

- It is a second degree felony if the violation results in great bodily harm,²¹ permanent disfigurement, or permanent disability as a proximate result²² of lawful conduct arising out of a response.
- It is a first degree felony²³ if the violation results in death as a proximate result of lawful conduct arising out of a response.

The bill amends s. 921.0022, F.S., the Code offense severity level ranking chart to rank the new felonies as follows:

- Level 3: Willful making of a false report of a crime which results in costs to responding agencies in excess of \$1,000 (third degree felony).
- Level 6: Willful making of a false report of a crime which results in great bodily harm, permanent disfigurement, or permanent disability (second degree felony).
- Level 8: Willful making of a false report of a crime which results in death (first degree felony).

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²¹ The bill does not define the term “great bodily harm” but the term has been construed by courts as “defin[ing] itself and means great as distinguished from slight, trivial, minor, or moderate harm, and as such does not include mere bruises as are likely to be inflicted in a simple assault and battery....” *Owens v. State*, 289 So.2d 472, 474 (Fla. 2d DCA 1974) (quoting *Anderson v. State*, 155 Ind.App. 121, 291 N.E.2d 579 (1973)). “Whether the defendant caused great bodily harm is typically a question of fact for the jury; however, a jury’s finding of great bodily harm must be supported by competent, substantial evidence.” *Gordon v. State*, 126 So.3d 292, 295 (Fla. 3d DCA 2011), review denied, 135 So.3d 290 (Fla. 2014).

²² The “proximate result” requirement appears to be comparable to the proximate causation requirement in tort, which also sometimes appears in criminal law. “When a party creates a condition of peril by his wrongful conduct, his actions can be found the proximate cause of the resulting injury, even if later events combined to cause such injury, so long as the later acts reasonably followed in the natural sequence of events.” *Reaves v. State*, 979 So.2d 1066, 1069 (Fla. 1st DCA 2008) (citations omitted), discussing proximate causation in the context of vehicular homicide, an offense for which proximate causation is an essential element.

²³ A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has not yet reviewed SB 1234. The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).²⁴

The EDR provided the following information relevant to its preliminary estimate:

Per [Florida Department of Law Enforcement], in FY 18-19, there were 178 arrests for making false reports of commission of crimes, with 77 guilty/convicted charges and 37 adjudication withheld charges. There were 124 arrests in FY 19-20, with 59 guilty/convicted and 12 adjudications withheld. It is not known how many of these incidents fell under the bill's amended language.

In FY 18-19, the incarceration rate for a Level 3, 3rd degree felony was 9.8%, and in FY 19-20 the incarceration rate was 8.8%. The incarceration rate for a Level 6, 2nd degree felony was 43.7% in FY 18-19, and in FY 19-20 the incarceration rate was 40.8%. The incarceration rate for a Level 8, 1st degree felony was 69.1% in FY 18-19, and in FY 19-20 the incarceration rate was 61.9%.²⁵

VI. Technical Deficiencies:

None.

²⁴ The EDR's preliminary estimate is on file with the Senate Committee on Criminal Justice.

²⁵ *Id.*

VII. Related Issues:

The Florida Constitution provides that “the state attorney shall be the prosecuting officer of all trial courts in that circuit.”²⁶ It is a long held tradition that prosecutors have wide discretion in determining whether or not to charge an individual with a crime as well as what specific charge to provide.²⁷ The bill creates several felonies based on the criminal act of falsely reporting a crime. A prosecutor, however, will hold wide discretion over the decision to charge an individual for either the misdemeanor offense or one of the felony offenses under the bill even if the act in question satisfies the definition of the most aggravated felony under the bill. Thus, the impact of the bill is indeterminate to the extent that each of the 20 different State Attorneys utilize his or her discretion.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 817.49 and 921.0022.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

²⁶ FLA. CONST. art. V, s. 17.

²⁷ *State v. Jogan*, 388 So. 2d 322, 323 (Fla. 3d DCA 1980) (Holding that the decision to either prosecute or *nolle prosequi* a defendant is solely at state attorney’s discretion). *Johnson v. State*, 314 So. 2d 573, 577 (Fla. 1975) (The State Attorney is the prosecuting officer and may elect to prosecute or not).