

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 371 False Reports of Crimes

**SPONSOR(S):** Judiciary Committee, Brannan

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Padgett	Hall
2) Justice Appropriations Subcommittee	10 Y, 0 N	Smith	Keith
3) Judiciary Committee	21 Y, 0 N, As CS	Padgett	Kramer

### SUMMARY ANALYSIS

Section 817.49, F.S., prohibits a person from willfully imparting, conveying, or causing to be imparted or conveyed to any law enforcement officer, false information or reports concerning the commission of any crime when the person knows the report is false and that no such crime has been committed. A person who is convicted of falsely reporting a crime under this section commits a first degree misdemeanor.

CS/HB 371 amends s. 817.49, F.S., to provide enhanced penalties if the public safety agency response from a false report of a crime results in substantial costs to responding agencies, specified bodily injury, or death. If a person willfully makes a false report of a crime to a law enforcement officer or employee of a public safety agency where:

- The combined costs to all responding agencies, including a federal, state, district, municipal, or other public safety agency are greater than \$2,000, the person commits a third degree felony.
- Great bodily harm, permanent disfigurement, or permanent disability occur to any person as a proximate result of lawful conduct arising out of a response, the person commits a second degree felony.
- Death to any person occurs as a proximate result of lawful conduct arising out of a response, the person commits a first degree felony.

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

The bill requires a court to order a person convicted of making a false report of a crime to pay full restitution for any cost incurred by a responding public safety agency.

The Criminal Justice Impact Conference considered the bill on March 8, 2021, and determined it would have a positive moderate impact on the prison population.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### *Swatting*

“Swatting” is the false report of an emergency to a public safety agency that is made with the intent of prompting a massive response by law enforcement and other first responders.<sup>1</sup> The person making the false report often claims they are a victim of a crime or witnessing a dangerous situation, usually involving firearms or the imminent threat of violence.<sup>2</sup> The overwhelming law enforcement response not only wastes resources and results in costs to the responding agencies, but can also result in harm to an innocent party.

In 2017, a California man made a 911 call to Wichita, Kansas falsely claiming he was inside a Wichita residence with hostages and a gun.<sup>3</sup> Police responded to the residence and ultimately ended up shooting the innocent homeowner who was completely unaware of the 911 call.<sup>4</sup> The California man who made the false report pleaded guilty to 51 federal charges and was sentenced to 20 years in prison.<sup>5</sup> In Florida, on November 13, 2020, a family in North Port was the victim of a swatting incident where an unknown person called 911 and falsely claimed to have murdered his wife.<sup>6</sup> When police responded to the address given by the caller, they found it was a hoax.<sup>7</sup> Subsequently, law enforcement officers discovered a person had hacked into the victim’s Ring doorbell camera and was watching the law enforcement response in real time.<sup>8</sup>

##### *False Reports*

Section 817.49, F.S., prohibits a person from willfully imparting, conveying, or causing to be imparted or conveyed to any law enforcement officer, false information or reports concerning the commission of any crime when the person knows the report is false and that no such crime has been committed.<sup>9</sup> A person who is convicted of falsely reporting a crime under this section commits a first degree misdemeanor.<sup>10,11</sup>

Florida law prohibits a person from making other specified reports to law enforcement and from misusing law enforcement and emergency medical services as follows:

- Section 365.172(14), F.S., prohibits a person from using the 911 system for the purpose of making a false alarm or complaint or reporting false information that could be used in an emergency response of any public safety agency, knowingly using the 911 system for any purpose other than obtaining public safety assistance, or knowingly using the 911 system to

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<sup>1</sup> 911.gov, *Public Safety Information on “SWATTING”*,

[https://www.911.gov/pdf/National\\_911\\_Program\\_Public\\_Safety\\_Information\\_Swatting\\_2015.pdf](https://www.911.gov/pdf/National_911_Program_Public_Safety_Information_Swatting_2015.pdf) (last visited Mar. 29, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> Michael Brice-Sadler, *Prankster sentenced to 20 years for fake 911 call that led police to kill an innocent man*, Washington Post (Mar. 29, 2019), <https://www.washingtonpost.com/nation/2019/03/29/prankster-sentenced-years-fake-call-that-led-police-kill-an-innocent-man/> (last visited Mar. 29, 2021).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Allyson Henning, *North Port family warning others after being targeted in swatting incident*, (Nov. 17, 2020),

<https://www.wfla.com/news/sarasota-county/north-port-family-warning-others-after-being-targeted-in-swatting-incident/> (last visited Mar. 29, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> s. 817.49, F.S.

<sup>10</sup> A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>11</sup> s. 817.49, F.S.

avoid any charge for service. A violation of this section is a first degree misdemeanor. A fifth or subsequent conviction for a violation of this section is a third degree felony.<sup>12</sup>

- Section 401.41(3), F.S., prohibits a person from summoning an emergency medical services vehicle when the person knows or has reason to know the services of the vehicle are not needed. The definition of emergency medical services does not include law enforcement. A first violation of this section is a second degree misdemeanor.<sup>13</sup> A second or subsequent violation is a first degree misdemeanor.
- Section 837.05, F.S., prohibits a person from knowingly giving false information to a law enforcement officer concerning the alleged commission of any crime. This section applies to false reports which are provided to a law enforcement officer during the investigation of an actual crime. A violation of this section is a first degree misdemeanor. A second or subsequent violation of this section is a third degree felony if the report was made in writing, recorded on audio or video, or corroborated by another person.<sup>14</sup> Section 837.05, F.S., also provides a person commits a third degree felony if he or she provides false information to a law enforcement officer concerning the alleged commission of a capital felony.<sup>15</sup>

### *Offense Severity Ranking Chart*

Felony offenses subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.<sup>16</sup>

### **Effect of Proposed Changes**

CS/HB 371 amends s. 817.49, F.S., to provide enhanced penalties if the public safety agency response from a false report of a crime results in substantial costs to the responding agencies, specified bodily injury, or death. If a person willfully makes a false report of a crime to a law enforcement officer or employee of a public safety agency where:

- The combined costs of the response by all responding agencies, including a federal, state, district, municipal, or other public safety agency are greater than \$2,000, the person commits a third degree felony.
  - The crime is ranked as a Level 3 offense on the OSRC.
- Great bodily harm, permanent disfigurement, or permanent disability to any person occur as the proximate result of lawful conduct arising out of a response, the person commits a second degree felony.<sup>17</sup>
  - The crime is ranked as a Level 6 offense on the OSRC.
  - The terms great bodily harm, permanent disfigurement, or permanent disability are not defined in the bill, but have been defined in case law. Great bodily harm is defined as a physical injury that is "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...."<sup>18</sup> The question of whether an injury rises to the level of great bodily harm, permanent disfigurement, or permanent disability is a question of fact that must be resolved by a jury at trial.<sup>19</sup>

<sup>12</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S. The offense is not ranked in the OSRC and defaults to a Level 1 offense. S. 921.0023, F.S.

<sup>13</sup> A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. *Id.*

<sup>14</sup> The offense is not ranked in the OSRC and defaults to a Level 1 offense. S. 921.0023, F.S.

<sup>15</sup> A capital felony is punishable by death. S. 775.082, F.S. The offense is ranked as a Level 7 offense on the OSRC. S. 921.0022, F.S.

<sup>16</sup> *Id.*

<sup>17</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>18</sup> *Coronado v. State*, 654 So.2d 1267, 1270 (Fla. 2d DCA 1995).

<sup>19</sup> *Owens v. State*, 289 So.2d 472 (Fla. 2d DCA 1974).

- Death occurs to any person as a proximate result of lawful conduct arising out of a response, the person commits a first degree felony.<sup>20</sup>
  - The crime is ranked as a Level 8 offense on the OSRC.

The bill requires a court to order a person convicted of making a false report of a crime to pay full restitution for any cost incurred by a responding public safety agency.

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

For a person to be criminally liable for a victim’s great bodily harm, permanent disfigurement, permanent disability, or death, the bill requires the victim’s injuries to be the proximate result of lawful conduct that resulted from the response of a public safety agency. Proximate result means that there must be such a natural, direct and continuous sequence between the act and the injury that it can reasonably be said that but for the act the injury would not have occurred.<sup>21</sup> The lawful conduct requirement means a person would not be responsible for physical harm to a victim that occurs if a person that is part of the public safety agency response acts outside the scope of his or her duties or commits a criminal act. For example, if a law enforcement officer responding to a false report of a crime unlawfully discharges a firearm, resulting in another person’s death, the act would be unlawful and the person who falsely reported the crime would not be criminally liable for the person’s death.

The bill is effective upon becoming a law.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 817.49, F.S., relating to false reports of commission of crimes; penalty.

**Section 2:** Amends s. 921.0022, F.S., relating to criminal punishment code; offense severity ranking chart.

**Section 3:** Provides an effective date of upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The Criminal Justice Impact Conference considered the bill on March 8, 2021, and determined it would have a positive moderate<sup>22</sup> impact on the prison population.<sup>23</sup>

Per FDLE, 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.<sup>24</sup>

The bill may increase the prison population, to the extent that a person convicted of making a false report to a public safety agency receives a prison sentence or a longer prison sentence as a result of the provisions in the bill.

<sup>20</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$15,000 fine. *Id.*

<sup>21</sup> *Jones v. Utica Mut. Ins. Co.*, 463 So.2d 1153 (Fla. 1985).

<sup>22</sup> Positive Moderate impact means an increase greater than 10 and less than 25.

<sup>23</sup> Criminal Justice Impact Conference, *HB 371 – False Reports of Crimes*, March 8, 2021, On file with the House Justice Appropriations Subcommittee.

<sup>24</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 29, 2021, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Increased the threshold amount for the combined cost of the public safety agency response to become a third degree felony under the bill from \$1,000 to \$2,000;
- Criminalized making a false report to any employee of a public safety agency;
- Expanded the definition of “public safety agency” to include a public entity that dispatches first responder services;
- Clarified the enhanced penalties in the bill apply if the public safety agency response results in great bodily harm, permanent disfigurement, permanent disability, or death to any person, including members of the responding public safety agency and the public; and
- Required the court to order a person convicted of willfully reporting a false crime to pay full restitution for the cost of the emergency response.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.